

SENATE BILL

No. 78

Introduced by Senator Polanco

May 17, 2001

An act to add Section 7047 to the Business and Professions Code, to amend Section 815.1 of, and to add Sections 1075, 1221, and 1228.1 to, the Civil Code, to add Section 21080.28 to the Public Resources Code, to amend Sections 367, 368, 369, 377, 840, 841, 842, 843, 846, 846.2, 1731, and 9601 of, and to add Sections 451.1, 848, and 857 to, the Public Utilities Code, to amend Section 6016.5 of, and to add Section 6052 to, the Revenue and Taxation Code, and to amend Section 80002 of, and to add Division 28 (commencing with Section 81000) to, the Water Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 78, as introduced, Polanco. Electric Utility Rate Stabilization Act of 2001.

(1) Existing law relating to contractors defines the term “contractor” and makes it a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without having a license, unless that person is particularly exempted from the provisions of that existing law.

This bill, except as specified, would exempt from those provisions an electrical corporation that is party to any agreement with the Department of Water Resources or other authorized state agency or authority relating to transmission or other facilities acquired from an electrical corporation.

(2) Existing law provides for the voluntary conveyance of conservation easements to qualified nonprofit organizations, and defines the term “conservation easement” to mean any limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of the land subject to such easement and is binding upon successive owners of such land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition.

This bill would define the term “conservation easement” to also mean any conveyance by an electrical corporation to a trust or other similar entity, formed for the benefit of the state or any state agency, of an easement or equivalent real property interest over, or affecting, any real property located in any county of this state, the terms of which restrict development of those lands in perpetuity or for a period not less than 50 years for purposes of ensuring the long-term conservation of that property for its public interest value. The bill would prohibit the easement or equivalent real property interest from being determined to fail to constitute and qualify as a conservation easement under specified circumstances relating to the use of the property.

(3) Existing law provides standards for the interpretation of grants and governs the recordation of transfers.

This bill would require, if any real property interest, as defined, held by an electrical corporation requires the consent of the grantor, as defined, for the electrical corporation’s transfer, as defined, of that real property interest, but provides no standard for the granting or withholding of that consent, the transfer consent requirement, in the case of the transfer of transmission assets by the electrical corporation to the Department of Water Resources or other authorized state agency or authority, to be construed to include an implied standard that the grantor’s consent may not be unreasonably withheld. The bill would impose certain requirements on the recordation of any instrument of conveyance that purports to transfer an interest to the department or any other authorized state agency or authority.

(4) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare and certify an environmental impact report on a project that it intends to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect either as proposed or as mitigated.



This bill would exempt from that act any project primarily involving the disposition to the State of California, or any agency thereof, of all or any portion of the transmission system or other utility assets of a public utility electrical corporation, as well as the grant of easements and conveyances in fee to certain lands for conservation purposes, pursuant to a settlement agreement, as defined, as well as implementing agreements described in that settlement agreement, and any other actions contemplated by that settlement agreement.

(5) Provisions of the Public Utilities Act restructuring the electrical industry establish a process for the recovery by electrical corporations of uneconomic costs during a transition period that began on January 1, 1998, and ends for an electrical corporation on the earlier of March 31, 2002, or the date that the electrical corporation fully recovers its uneconomic costs. Existing law imposes a rate freeze and a rate reduction during the transition period to remain in effect until March 31, 2002, unless the electrical corporation fully recovers its uneconomic costs at an earlier date. The electrical corporation is at risk for those costs not recovered during that time period. Existing law requires the Public Utilities Commission to establish an effective mechanism that ensures the recovery of transition costs.

This bill would exempt from that assignment of the risk of unrecovered costs an electrical corporation that has entered into a electrical rate settlement agreement, as described in (7), below. The bill would require the commission to establish an effective mechanism that ensures recovery of qualified costs. The bill would authorize the commission to establish rates that enable a public utility electrical corporation, to the extent that the public utility electrical corporation has entered into an electric rate settlement agreement, provided that the electrical corporation is not in default of that agreement, or the agreement has not been terminated by reason of the default by the electrical corporation, to recover costs incurred after January 1, 2001, associated with generation assets and obligations, on the terms of, and subject to, the conditions of the settlement agreement, even if those costs were incurred during periods during which the electrical corporation's rates were set by existing law.

The bill would prohibit the commission, if an electrical corporation is party to definitive agreements required to be entered into as part of an electric rate settlement agreement, and that electrical corporation is not in material default under that settlement agreement, from reducing, before January 1, 2011, that electrical corporation's authorized return



on equity below the return authorized by the decision or decisions of the commission governing authorized return on equity applicable to that electrical corporation as of the date of that electric rate settlement agreement or establishing a ratemaking capital structure for that electrical corporation with proportions of common equity, preferred equity, and long term indebtedness different than those authorized by the decision or decisions of the commission governing ratemaking capital structure of that electrical corporation as of the date of the electric rate settlement agreement, unless the commission determines that the establishment of a different ratemaking capital structure is necessary to maintain an investment grade credit rating for the electrical corporation.

(7) The Public Utilities Act provides for the issuance of rate reduction bonds in connection with the recovery of transition costs.

This bill would provide for the issuance of financing orders, until December 15, 2006, in connection with the recovery of qualified costs, including the net undercollected amount or other amount contemplated to be recovered by a dedicated rate component, determined in the applicable electric rate settlement agreement and as verified by the commission in accordance with that settlement agreement, interest associated with that net undercollected amount or other amount, and the reasonable costs of providing, recovering, financing, or refinancing qualified costs through a financing order. Rate reduction bonds or other evidences of indebtedness or ownership issued to finance recovery of qualified costs would be referred to as “rate stabilization bonds.”

Under the bill, “settlement agreement” is defined as a memorandum of understanding entered into prior to December 15, 2001, by an electrical corporation and the department setting forth a plan for (1) the acquisition of certain transmission facilities by the state, (2) the stipulated judgment, dismissal, or release of any litigation or claim that electrical corporation may have or could have had against the state, the federal government, or the commission for takings or under the filed rate doctrine arising from or related to the facts asserted in that litigation or, in the case of any electrical corporation that has not commenced litigation, which could be asserted in litigation, (3) the dedication of generation assets or interest therein owned by the electrical corporation for the benefit of California ratepayers, and (4) if the electrical corporation owns watershed lands in the Sierra Nevada mountains, for the transfer by the electrical corporation to the state of either ownership of, or conservation easements with respect to, watershed lands owned



by that electrical corporation associated with hydroelectric generating facilities owned by that electric corporation on the effective date of that memorandum of understanding.

The bill would require customers to continue to pay dedicated rate components in accordance with the financing orders until the electrical corporation has recovered the qualified costs set forth in the financing orders and, if rate stabilization bonds have been issued, until those bonds are paid in full by the financing entity. Because a violation of the Public Utilities Act is a crime, this bill, by imposing new requirements on customers, would change the definition of a crime, thereby imposing a state-mandated local program.

The bill would make corresponding changes to existing law.

(8) Existing law relating to the imposition of a sales tax excludes electrical transmission lines from the definition of “tangible personal property.”

This bill would also exclude any other property that may be sold or transferred by an electrical corporation to the department or any other state agency or authority pursuant to a settlement agreement. The bill would prohibit any conveyance of tangible personal property by an electrical corporation to the department or any other state agency or authority pursuant to a settlement agreement from constituting the sale of tangible personal property.

(9) Existing law authorizes the department to enter into contracts for the purchase of electric power. Existing law authorizes the department to sell power to retail end-use customers and, with specified exceptions, to local publicly owned electric utilities at not more than the department’s acquisition costs. Existing law authorizes the department to issue revenue bonds for those purposes.

This bill would authorize the department to acquire, if the Director of Finance determines that certain conditions have occurred, or construct any transmission facilities, to maintain and operate any transmission facilities, or to dispose of all or any portion of any transmission facilities or of the capacity or output of any transmission facilities. The bill would also authorize the department to incur indebtedness and issue revenue bonds for the purposes of paying the costs of transmission facilities and reimbursing expenditures from the fund for those purposes, renewing or refunding other bonds, and for any other purpose of the department authorized by the bill. The bill would authorize the department to pay or provide for the payment of all costs of transmission facilities not funded from the proceeds of bonds. The



bill would authorize the department to acquire property through the exercise of the power of eminent domain.

The bill, except as specified, would authorize the department to fix, establish, revise, charge, receive, and collect, either directly or through an agent, tariffs, rates, and charges for capacity and output and other use of transmission facilities. The bill would require the commission, to the extent that the department advises the commission that a portion of the department's revenue requirements are to be collected directly from retail end-use customers, to fix, establish, and revise tariffs, rates, and charges payable by the related retail end-use customers to recover in full the tariffs, rates, and charges for the use of transmission facilities, or the capacity and output thereof, by or for the benefit of, those retail end-use customers.

The bill would establish in the State Treasury the Department of Water Resources Electric Transmission Fund, the moneys in which would be continuously appropriated to the department for expenditure for the purposes of the bill. The bill would require all revenues payable to the department under the bill to be deposited in the fund.

The bill would require the department to prepare and submit to the Governor and the Legislature annual reports regarding its activities and expenditures pursuant to the bill.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 "Electric Utility Rate Stabilization Act of 2001."

3 SEC. 2. The Legislature finds and declares all of the
4 following:

5 (a) A major component of retail electric utility rates in
6 California is the cost of procuring electricity in the wholesale
7 markets needed to provide electric service.

1 (b) Electrical corporations have incurred substantial costs
2 procuring power in the wholesale markets that could not be
3 currently recovered in full from retail customers and the failure to
4 recover those costs is jeopardizing the ability of those corporations
5 to continue to provide reliable service.

6 (c) In order to prevent substantial harm to the economy and
7 people of the state that would result from the immediate recovery
8 of those costs, it is necessary to provide for the recovery of a
9 portion of those costs over a period of years and to provide a
10 mechanism by which those costs may be financed prior to
11 recovery.

12 (d) In light of the current financial condition of the electrical
13 corporations in the state and the general condition of the electric
14 utility industry in the state, the financing costs that will be reflected
15 in rates paid by electric customers can be substantially reduced
16 through financing backed by irrevocable, nonbypassable rates and
17 charges.

18 (e) It is the intent of the Legislature that, to the extent that an
19 electrical corporation has entered into a settlement agreement with
20 the state as to certain claims and agreed to certain other actions as
21 described in the act adding this section, provision should be made
22 for the recovery of unrecovered costs of acquiring electric power
23 to meet the retail load of that electric corporation in accordance
24 with and to the extent provided in a settlement agreement as
25 described in the act adding this section through dedicated rate
26 components in the retail rates applicable to customers within the
27 service area of that electrical corporation to mitigate the costs
28 borne by those customers, and that the Public Utilities
29 Commission will implement financing orders allowing those
30 electrical corporations to recover these unrecovered costs through
31 those dedicated rate components.

32 (f) Subject to the conditions provided in the act adding this
33 section, the acquisition by an agency or authority of the state from
34 electrical corporations of certain transmission facilities and certain
35 other assets as contemplated by the settlement agreements
36 described in subdivision (e) is in the public interest.

37 (g) The authorizations and provisions set forth in the act adding
38 this section are necessary to ensure that reliable service to retail
39 customers is not jeopardized by the substantial under-recovery of
40 wholesale electric costs by electrical corporations and that the

1 impact on electric rates caused by providing for the recovery of
2 those costs should be minimized to the extent practicable.

3 (h) Neither the full faith and credit nor the taxing power of the
4 State of California is pledged to the payment of the principal of,
5 or any interest on, any securities authorized by the act adding this
6 section.

7 SEC. 3. Section 7047 is added to the Business and Professions
8 Code, to read:

9 7047. Notwithstanding Section 7026 or 7028, no electrical
10 corporation that is party to any agreement with the Department of
11 Water Resources or other authorized state agency or authority
12 relating to transmission or other facilities acquired from an
13 electrical corporation may be required to comply with those
14 sections, except to the extent that the electrical corporation would
15 have to so comply if the transmission or other facilities were
16 owned by an electrical corporation. The Department of Water
17 Resources or other authorized state agency or authority may
18 include provisions as it determines to be appropriate in an
19 agreement as to the matters addressed in those sections.

20 SEC. 4. Section 815.1 of the Civil Code is amended to read:

21 815.1. (a) For the purposes of this chapter, “conservation
22 easement” means any limitation in a deed, will, or other
23 instrument in the form of an easement, restriction, covenant, or
24 condition, which is or has been executed by or on behalf of the
25 owner of the land subject to such easement and is binding upon
26 successive owners of such land, and the purpose of which is to
27 retain land predominantly in its natural, scenic, historical,
28 agricultural, forested, or open-space condition.

29 (b) *“Conservation easement” shall also mean any conveyance*
30 *by an electrical corporation to a trust or other similar entity,*
31 *formed for the benefit of the state or any state agency, of an*
32 *easement or equivalent real property interest over, or affecting,*
33 *any real property located in any county of this state, the terms of*
34 *which restrict development of those lands in perpetuity or for a*
35 *period not less than 50 years for purposes of ensuring the*
36 *long-term conservation of that property for its public interest value*
37 *for the people of this state, including fish, wildlife, and other*
38 *ecological purposes; human recreation; preservation of open*
39 *space and cultural resources; and for protection of water quality,*
40 *or watershed, flooding, or drainage functions. The easement or*



1 *equivalent real property interest may not be determined to fail to*
2 *constitute and qualify as a conservation easement under this*
3 *chapter, under any of the following circumstances:*

4 (1) *Nonutility uses of the property existing as of the time the*
5 *easement or equivalent real property interest is conveyed are*
6 *permitted to continue.*

7 (2) *Utility uses, including the maintenance, repair,*
8 *replacement, and installation of public utility infrastructure,*
9 *including, but not limited to, water and sewer pipelines, and*
10 *electric and telecommunications lines, existing as of the time the*
11 *easement or equivalent real property interest is conveyed are*
12 *permitted to continue.*

13 (3) *Expansion of hydroelectric utility facilities located on the*
14 *property as of the time the easement or equivalent real property*
15 *interest is conveyed are permitted, subject to the approval of the*
16 *state and federal agencies having jurisdiction over any expansion.*

17 (4) *Timber harvesting, logging, or similar activities are*
18 *permitted, subject to modification based on management and*
19 *disposition plans approved by the Wildlife Conservation Board or*
20 *other authorized state agency that are developed during the period*
21 *of time that easement or equivalent real property interest is held*
22 *by that trust or other similar entity.*

23 (5) *The maintenance, repair, replacement, and installation of*
24 *public utility infrastructure, including, but not limited to, water*
25 *and sewer pipelines, and electric and telecommunications lines for*
26 *nonutility and other uses are permitted, to the extent those*
27 *activities are permitted by the terms of the management and*
28 *disposition plans approved by the Wildlife Conservation Board or*
29 *other authorized state agency that are developed during the period*
30 *of time that easement or equivalent real property interest is held*
31 *by that trust or other similar entity.*

32 (6) *The interests of the trust or other similar entity in and to the*
33 *easement or equivalent real property interest are transferred to this*
34 *state or any authorized state agency, to the United States Forest*
35 *Service or other applicable federal agency, or to a local*
36 *governmental entity or nongovernmental organization specified in*
37 *Section 815.3.*

38 SEC. 5. Section 1075 is added to the Civil Code, to read:

39 1075. (a) If any real property interest held by an electrical
40 corporation requires the grantor's consent for the electrical

1 corporation's transfer of that real property interest, but provides no
2 standard for the granting or withholding of that consent, the
3 transfer consent requirement, in the case of the transfer of
4 transmission assets by the electrical corporation to the Department
5 of Water Resources or other authorized state agency or authority
6 shall be construed to include an implied standard that the grantor's
7 consent may not be unreasonably withheld.

8 (b) The Legislature finds and declares that the transfer of the
9 transmission assets by an electrical corporation to the Department
10 of Water Resources or other authorized state agency or authority
11 is a continuation of the public utility use of those assets.
12 Accordingly, no term or provision of any real property interest
13 held by an electrical corporation that purports to prohibit or limit
14 a transfer of that real property interest, or purports to require the
15 consent of the grantor of the real property interest as a condition
16 to that transfer, may be enforced to prohibit or render void any
17 transfer of that real property interest to the Department of Water
18 Resources or other authorized state agency or authority in
19 connection with the transfer of the transmission assets of that
20 electrical corporation to the Department of Water Resources or
21 other authorized state agency or authority. However, subdivision
22 (a) may not be construed to affect any claim for compensation that
23 the grantor might have under existing law for the failure of the
24 electrical corporation to comply with any provision of the real
25 property interest that imposes that prohibition or limitation or that
26 requires the grantor's consent to transfer.

27 (c) As used in this section, the following terms have the
28 following meanings:

29 (1) "Grantor" means the grantor, lessor or sublessor, licensor,
30 owner of fixture or appurtenance, permittor, encumbrancer, or
31 other party to the real property interest or any agreement, including
32 a security agreement, relating thereto, and its successors and
33 assigns.

34 (2) "Real property interest" means an interest in fee, an
35 easement, lease or sublease, estate for years, fixture, appurtenance,
36 license, permit, or other agreement regarding title to or the use or
37 possession of real property, or any interest therein, whether the real
38 property interest is held alone or in common with any other person
39 or entity.



(3) “Transfer” means any assignment, deed, conveyance, grant, including, but not limited to, grant of an easement, lease, sublease, division, encumbrance, or other transfer.

SEC. 6. Section 1221 is added to the Civil Code, to read:

1221. All of the following shall apply to any deed, assignment, or other instrument of conveyance that purports to transfer to the Department of Water Resources or any other authorized state agency or authority any right, title, or interest of any nature, whether a fee estate, easement or license, leasehold or subleasehold estate, estate for years, or other right or estate affecting title to, or the right of use or possession of, any real property, or any fixtures, improvements, or facilities located thereon or appurtenant thereto, of an electrical corporation or any affiliate thereof in, to, affecting or relating to, any real property located in any county of this state:

(a) The instrument of conveyance shall be accepted for recordation by the county recorder of any county in this state in which the real property or any portion thereof is located.

(b) The instrument of conveyance shall transfer and vest unconditionally, irredeemably, and irrevocably in the Department of Water Resources or other authorized state agency or authority the full right, title, and interest of the electrical corporation or affiliate in and to the real property and in and to any and all fixtures, improvements or facilities located thereon or appurtenant thereto, to the extent purported to be conveyed by that deed, assignment, or other instrument.

(c) The instrument of conveyance, if it is in writing, is duly acknowledged by the electrical corporation, or affiliate as required pursuant to Article 3 (commencing with Section 1180), and is recorded in the official records of each county in this state in which the real property or portion thereof affected by the conveyance may be located pursuant to Article 2 (commencing with Section 1169), shall provide constructive notice of the conveyance to the Department of Water Resources or any other authorized state agency or authority of the right, title, and interest of the electrical corporation or affiliate in and to the real property interests described or referred to in the instrument and in and to any and all fixtures, improvements, or facilities located thereon or appurtenant thereto and purported to be conveyed by the instrument.

1 (d) The instrument of conveyance shall be effective and
2 enforceable for all purposes as against the electrical corporation or
3 affiliate and as against any purchaser, mortgagee, or other third
4 party that may thereafter acquire any interest of any nature in the
5 real property or any fixtures, improvements or facilities located
6 thereon or appurtenant thereto, notwithstanding that the deed,
7 assignment, or other instrument of conveyance does not include a
8 specific legal description of the real property affected thereby or
9 a statement of the assessor's parcel number for the real property
10 affected thereby. However, the deed, assignment or other
11 instrument of conveyance shall either (1) refer to, for a description
12 of the real property affected thereby or any fixtures, improvements
13 or facilities located thereon or appurtenant thereto, to instruments
14 or agreements which are not recorded in the Official Records of the
15 county or counties in which that real property is located, but which
16 are reflected or described in the books and records of that electrical
17 corporation or affiliate, or in the books and records of the
18 Independent System Operator, the Federal Energy Regulatory
19 Commission, the Public Utilities Commission, the Department of
20 Water Resources, or the Department of Finance, which books and
21 records are reasonably available for public inspection at the time
22 the interest of the purchaser, mortgagee, or other third party is
23 acquired, or (2) contain information regarding the nature, general
24 location, scope, and extent of the real property, fixtures,
25 improvements, or facilities that would be sufficient to place third
26 parties on inquiry notice of the right, title, or interest claimed by
27 the Department of Water Resources or other authorized state
28 agency or authority under or by reason of the deed, assignment, or
29 other instrument of conveyance.

30 SEC. 7. Section 1228.1 is added to the Civil Code, to read:

31 1228.1. No conveyance by an electrical corporation or any
32 affiliate thereof that purports to transfer to the Department of
33 Water Resources or any other authorized state agency or authority
34 any right, title, or interest of that electrical corporation or affiliate
35 in or to any real property, or interests therein, located in any county
36 of this state, or in or to any fixtures, improvements, or facilities
37 located thereon or appurtenant thereto, or in or to any personal
38 property related thereto or used in connection therewith, may be
39 void or voidable by any creditor of the electrical corporation or
40 affiliate pursuant to Part 2 (commencing with Section 3429) of



Division 4 or any other principle, whether legal or equitable; provided that nothing in this section shall affect the rights of a purchaser or mortgagee in good faith and for a valuable consideration whose conveyance or mortgage is first duly recorded, without actual, inquiry or constructive notice of the right, title, or interest of the Department of Water Resources or agency or authority, prior to the recordation of the deed, assignment, or other instrument conveying that right, title, and interest to the Department of Water Resources or agency or authority.

SEC. 8. Section 21080.28 is added to the Public Resources Code, to read:

21080.28. This division does not apply to any project primarily involving the sale, lease, transfer, assignment, or other disposition to the State of California, or any agency thereof, of all or any portion of the transmission system or other utility assets of a public utility electrical corporation, as well as the grant of easements and conveyances in fee to certain lands for conservation purposes, pursuant to a settlement agreement, as defined in Section 840 of the Public Utilities Code, as well as implementing agreements described in that settlement agreement, including, without limitation, equipment, facilities, real property interests, transmission towers, transmission lines, and any other assets used in the business of the electrical corporation, and any other actions contemplated by that settlement agreement, including, but not limited to, the operation and maintenance of that transmission or other assets by the electrical corporation.

SEC. 9. Section 367 of the Public Utilities Code is amended to read:

367. The commission shall identify and determine those costs and categories of costs for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including, but not limited to, restructurings, renegotiations or terminations thereof approved by the commission, that were being collected in commission-approved rates on December 20, 1995, and that may become uneconomic as a result of a competitive generation market, in that these costs may not be recoverable in market prices in a competitive market, and appropriate costs incurred after December 20, 1995, for capital

1 additions to generating facilities existing as of December 20, 1995,
2 that the commission determines are reasonable and should be
3 recovered, provided that these additions are necessary to maintain
4 the facilities through December 31, 2001. These uneconomic costs
5 shall include transition costs as defined in subdivision (f) of
6 Section 840, and shall be recovered from all customers or in the
7 case of fixed transition amounts, from the customers specified in
8 subdivision (a) of Section 841, on a nonbypassable basis and shall:

9 (a) Be amortized over a reasonable time period, including
10 collection on an accelerated basis, consistent with not increasing
11 rates for any rate schedule, contract, or tariff option above the
12 levels in effect on June 10, 1996; provided that, the recovery shall
13 not extend beyond December 31, 2001, except as follows:

14 (1) Costs associated with employee-related transition costs as
15 set forth in subdivision (b) of Section 375 shall continue until fully
16 collected; provided, however, that the cost collection shall not
17 extend beyond December 31, 2006.

18 (2) Power purchase contract obligations shall continue for the
19 duration of the contract. Costs associated with any buy-out,
20 buy-down, or renegotiation of the contracts shall continue to be
21 collected for the duration of any agreement governing the buy-out,
22 buy-down, or renegotiated contract; provided, however, no power
23 purchase contract shall be extended as a result of the buy-out,
24 buy-down, or renegotiation.

25 (3) Costs associated with contracts approved by the
26 commission to settle issues associated with the Biennial Resource
27 Plan Update may be collected through March 31, 2002; provided
28 that only 80 percent of the balance of the costs remaining after
29 December 31, 2001, shall be eligible for recovery.

30 (4) Nuclear incremental cost incentive plans for the San Onofre
31 nuclear generating station shall continue for the full term as
32 authorized by the commission in Decision 96-01-011 and Decision
33 96-04-059; provided that the recovery shall not extend beyond
34 December 31, 2003.

35 (5) Costs associated with the exemptions provided in
36 subdivision (a) of Section 374 may be collected through March 31,
37 2002, provided that only fifty million dollars (\$50,000,000) of the
38 balance of the costs remaining after December 31, 2001, shall be
39 eligible for recovery.

(6) Fixed transition amounts, as defined in subdivision (d) of Section 840, may be recovered from the customers specified in subdivision (a) of Section 841 until all rate reduction bonds associated with the fixed transition amounts have been paid in full by the financing entity.

(b) Be based on a calculation mechanism that nets the negative value of all above market utility-owned generation-related assets against the positive value of all below market utility-owned generation related assets. For those assets subject to valuation, the valuations used for the calculation of the uneconomic portion of the net book value shall be determined not later than December 31, 2001, and shall be based on appraisal, sale, or other divestiture. The commission's determination of the costs eligible for recovery and of the valuation of those assets at the time the assets are exposed to market risk or retired, in a proceeding under Section 455.5, 851, or otherwise, shall be final, and notwithstanding Section 1708 or any other provision of law, may not be rescinded, altered or amended.

(c) Be limited in the case of utility-owned fossil generation to the uneconomic portion of the net book value of the fossil capital investment existing as of January 1, 1998, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the additions are necessary to maintain the facilities through December 31, 2001. ~~All~~ *Except as otherwise provided in an electric rate settlement agreement, as defined in Section 840, and provided that the electrical corporation is not in material default thereunder, all "going forward costs" of fossil plant operation, including operation and maintenance, administrative and general, fuel and fuel transportation costs incurred prior to December 31, 2000, shall be recovered solely from independent Power Exchange revenues or from contracts with the Independent System Operator, provided that for the purposes of this chapter, the following costs may be recoverable pursuant to this section:*

(1) Commission-approved operating costs for particular utility-owned fossil powerplants or units, at particular times when reactive power/voltage support is not yet procurable at market-based rates in locations where it is deemed needed for the reactive power/voltage support by the Independent System

Operator, provided that the units are otherwise authorized to recover market-based rates and provided further that for an electrical corporation that is also a gas corporation and that serves at least four million customers as of December 20, 1995, the commission shall allow the electrical corporation to retain any earnings from operations of the reactive power/voltage support plants or units and shall not require the utility to apply any portions to offset recovery of transition costs. Cost recovery under the cost recovery mechanism shall end on December 31, 2001.

(2) An electrical corporation that, as of December 20, 1995, served at least four million customers, and that was also a gas corporation that served less than four thousand customers, may recover, pursuant to this section, 100 percent of the uneconomic portion of the fixed costs paid under fuel and fuel transportation contracts that were executed prior to December 20, 1995, and were subsequently determined to be reasonable by the commission, or 100 percent of the buy-down or buy-out costs associated with the contracts to the extent the costs are determined to be reasonable by the commission.

(d) Be adjusted throughout the period through March 31, 2002, to track accrual and recovery of costs provided for in this subdivision. Recovery of costs prior to December 31, 2001, shall include a return as provided for in Decision 95-12-063, as modified by Decision 96-01-009, together with associated taxes.

(e) (1) Be allocated among the various classes of customers, rate schedules, and tariff options to ensure that costs are recovered from these classes, rate schedules, contract rates, and tariff options, including self-generation deferral, interruptible, and standby rate options in substantially the same proportion as similar costs are recovered as of June 10, 1996, through the regulated retail rates of the relevant electric utility, provided that there shall be a firewall segregating the recovery of the costs of competition transition charge exemptions such that the costs of competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from these customers, and the costs of competition transition charge exemptions granted to members of the combined class of customers, other than residential and small commercial customers, shall be recovered only from these customers.

(2) Individual customers shall not experience rate increases as a result of the allocation of transition costs. However, customers who elect to purchase energy from suppliers other than the Power Exchange through a direct transaction, may incur increases in the total price they pay for electricity to the extent the price for the energy exceeds the Power Exchange price.

(3) The commission shall retain existing cost allocation authority, provided the firewall and rate freeze principles are not violated.

SEC. 10. Section 368 of the Public Utilities Code is amended to read:

368. Each electrical corporation shall propose a cost recovery plan to the commission for the recovery of the uneconomic costs of an electrical corporation's generation-related assets and obligations identified in Section 367. The commission shall authorize the electrical corporation to recover the costs pursuant to the plan if the plan meets the following criteria:

(a) The cost recovery plan shall set rates for each customer class, rate schedule, contract, or tariff option, at levels equal to the level as shown on electric rate schedules as of June 10, 1996, provided that rates for residential and small commercial customers shall be reduced so that these customers shall receive rate reductions of no less than 10 percent for 1998 continuing through 2002. These rate levels for each customer class, rate schedule, contract, or tariff option shall remain in effect until the earlier of March 31, 2002, or the date on which the commission-authorized costs for utility generation-related assets and obligations have been fully recovered. ~~The~~ *Except as otherwise provided in an electrical rate settlement agreement, as defined in Section 840, the* electrical corporation shall be at risk for those costs not recovered during that time period. Each utility shall amortize its total uneconomic costs, to the extent possible, such that for each year during the transition period its recorded rate of return on the remaining uneconomic assets does not exceed its authorized rate of return for those assets. For purposes of determining the extent to which the costs have been recovered, any over-collections recorded in Energy Costs Adjustment Clause and Electric Revenue Adjustment Mechanism balancing accounts, as of December 31, 1996, shall be credited to the recovery of the costs.

1 (b) The cost recovery plan shall provide for identification and
2 separation of individual rate components such as charges for
3 energy, transmission, distribution, public benefit programs, and
4 recovery of uneconomic costs. The separation of rate components
5 required by this subdivision shall be used to ensure that customers
6 of the electrical corporation who become eligible to purchase
7 electricity from suppliers other than the electrical corporation pay
8 the same unbundled component charges, other than energy, that a
9 bundled service customer pays. No cost shifting among customer
10 classes, rate schedules, contract, or tariff options shall result from
11 the separation required by this subdivision. Nothing in this
12 provision is intended to affect the rates, terms, and conditions or
13 to limit the use of any Federal Energy Regulatory
14 Commission-approved contract entered into by the electrical
15 corporation prior to the effective date of this provision.

16 (c) In consideration of the risk that the uneconomic costs
17 identified in Section 367 may not be recoverable within the period
18 identified in subdivision (a) of Section 367, an electrical
19 corporation that, as of December 20, 1995, served more than four
20 million customers, and was also a gas corporation that served less
21 than four thousand customers, shall have the flexibility to employ
22 risk management tools, such as forward hedges, to manage the
23 market price volatility associated with unexpected fluctuations in
24 natural gas prices, and the out-of-pocket costs of acquiring the risk
25 management tools shall be considered reasonable and collectible
26 within the transition freeze period. This subdivision applies only
27 to the transaction costs associated with the risk management tools
28 and shall not include any losses from changes in market prices.

29 (d) In order to ensure implementation of the cost recovery plan,
30 the limitation on the maximum amount of cost recovery for
31 nuclear facilities that may be collected in any year adopted by the
32 commission in Decision 96-01-011 and Decision 96-04-059 shall
33 be eliminated to allow the maximum opportunity to collect the
34 nuclear costs within the transition cap period.

35 (e) As to an electrical corporation that is also a gas corporation
36 serving more than four million California customers, so long as
37 any cost recovery plan adopted in accordance with this section
38 satisfies subdivision (a), it shall also provide for annual increases
39 in base revenues, effective January 1, 1997, and January 1, 1998,
40 equal to the inflation rate for the prior year plus two percentage

points, as measured by the consumer price index. The increase shall do both of the following:

(1) Remain in effect pending the next general rate case review, which shall be filed not later than December 31, 1997, for rates that would become effective in January 1999. For purposes of any commission-approved performance-based ratemaking mechanism or general rate case review, the increases in base revenue authorized by this subdivision shall create no presumption that the level of base revenue reflecting those increases constitute the appropriate starting point for subsequent revenues.

(2) Be used by the utility for the purposes of enhancing its transmission and distribution system safety and reliability, including, but not limited to, vegetation management and emergency response. To the extent the revenues are not expended for system safety and reliability, they shall be credited against subsequent safety and reliability base revenue requirements. Any excess revenues carried over shall not be used to pay any monetary sanctions imposed by the commission.

(f) The cost recovery plan shall provide the electrical corporation with the flexibility to manage the renegotiation, buy-out, or buy-down of the electrical corporation's power purchase obligations, consistent with review by the commission to assure that the terms provide net benefits to ratepayers and are otherwise reasonable in protecting the interests of both ratepayers and shareholders.

(g) An example of a plan authorized by this section is the document entitled "Restructuring Rate Settlement" transmitted to the commission by Pacific Gas and Electric Company on June 12, 1996.

SEC. 11. Section 369 of the Public Utilities Code is amended to read:

369. (a) The commission shall establish an effective mechanism that ensures recovery of transition costs referred to in Sections 367, 368, 375, and 376, and subject to the conditions in Sections 371 to 374, inclusive, from all existing and future consumers in the service territory in which the utility provided electricity services as of December 20, 1995; provided, that the costs shall not be recoverable for new customer load or incremental load of an existing customer where the load is being met through a direct transaction and the transaction does not

1 otherwise require the use of transmission or distribution facilities
2 owned by the utility. However, the obligation to pay the
3 competition transition charges cannot be avoided by the formation
4 of a local publicly owned electrical corporation on or after
5 December 20, 1995, or by annexation of any portion of an
6 electrical corporation's service area by an existing local publicly
7 owned electric utility.

8 ~~This~~

9 *(b) The commission also shall establish an effective mechanism*
10 *that ensures recovery of qualified costs referred to in Section 840.*
11 *The obligation to pay the transition charges cannot be avoided by*
12 *the formation of a local publicly owned electrical corporation on*
13 *or after January 15, 2001, or by annexation of any portion of an*
14 *electrical corporation's service area by an existing local publicly*
15 *owned electric utility, as defined in subdivision (d) of Section 9604,*
16 *as defined in subdivision (d) of Section 9604.*

17 *(c) This section shall* ~~shall~~ *does not apply to service taken under*
18 *tariffs, contracts, or rate schedules that are on file, accepted, or*
19 *approved by the Federal Energy Regulatory Commission, unless*
20 *otherwise authorized by the Federal Energy Regulatory*
21 *Commission.*

22 SEC. 12. Section 377 of the Public Utilities Code is amended
23 to read:

24 377. (a) The commission shall continue to regulate the
25 facilities for the generation of electricity owned by any public
26 utility prior to January 1, 1997, that are subject to commission
27 regulation until the owner of those facilities has applied to the
28 commission to dispose of those facilities and has been authorized
29 by the commission under Section 851 to undertake that disposal.
30 Notwithstanding any other provision of law, no facility for the
31 generation of electricity owned by a public utility may be disposed
32 of prior to January 1, 2006. The commission shall ensure that
33 public utility generation assets remain dedicated to service for the
34 benefit of California ratepayers.

35 (b) *Notwithstanding any other provision of law, the*
36 *commission may establish rates that enable a public utility*
37 *electrical corporation, to the extent that the public utility electrical*
38 *corporation has entered into an electric rate settlement agreement,*
39 *as defined in Section 840 of the Public Utilities Code, and if the*
40 *electrical corporation is not in default of that agreement, or the*

agreement has not been terminated by reason of the default by the electrical corporation, to recover costs incurred after January 1, 2001, associated with generation assets and obligations, on the terms of, and subject to, the conditions of the settlement agreement, even if those costs were incurred during periods during which the electrical corporation's rates were set at levels prescribed by Sections 367 and 368.

SEC. 13. Section 451.1 is added to the Public Utilities Code, to read:

451.1. (a) If an electrical corporation is party to the definitive agreements required to be entered into as part of an electric rate settlement agreement, as defined in Section 840, and that electrical corporation is not in material default under that settlement agreement, the commission may not do either of the following:

(1) Before January 1, 2011, reduce that electrical corporation's authorized return on equity below the return authorized by the decision or decisions of the commission governing authorized return on equity applicable to that electrical corporation as of the date of that electric rate settlement agreement.

(2) Establish a ratemaking capital structure for that electrical corporation with proportions of common equity, preferred equity, and long-term indebtedness different than those authorized by the decision or decisions of the commission governing ratemaking capital structure of that electrical corporation as of the date of the electric rate settlement agreement, unless establishment of a different ratemaking capital structure is necessary to maintain an investment grade credit rating for the electrical corporation, in the determination of the commission.

(b) Rate reduction bonds, as defined in Section 840, may not be considered indebtedness for purposes of determining an electrical corporation's authorized capital structure.

SEC. 14. Section 840 of the Public Utilities Code is amended to read:

840. For the purposes of this article, the following terms shall have the following meanings:

(a) "Bank" means the California Infrastructure and Economic Development Bank.

(b) "Department" means the Department of Water Resources.

(c) "Disconnectible charges" means rates and charges the nonpayment of which by a customer, in whole or in part, entitles

1 *an electrical corporation to disconnect electric service under*
2 *procedures set forth in commission tariffs.*

3 (d) “Electric rate settlement agreement” and “settlement
4 agreement” mean a memorandum of understanding entered into
5 prior to December 15, 2001, by an electrical corporation and the
6 department, as the same may be amended and supplemented by
7 agreement of the parties, setting forth a plan that includes, but is
8 not limited to, provisions calling for all of the following:

9 (1) The acquisition of certain transmission facilities by the
10 state.

11 (2) The stipulated judgment, dismissal, or release of any
12 litigation or claim that electrical corporation may have or could
13 have had against the state or any agency, department, or
14 subdivision thereof, the federal government, or the commission for
15 takings or under the filed rate doctrine arising from or related to
16 the facts asserted in that litigation or, in the case of any electrical
17 corporation that has not commenced litigation, which could be
18 asserted in litigation.

19 (3) The dedication of generation assets or interest therein
20 owned by the electrical corporation for the benefit of California
21 ratepayers.

22 (4) If the electrical corporation owns watershed lands in the
23 Sierra Nevada mountains, the transfer by the electrical
24 corporation to the state of either ownership of, or conservation
25 easements with respect to, watershed lands owned by that
26 electrical corporation associated with hydroelectric generating
27 facilities owned by that electric corporation on the effective date
28 of that memorandum of understanding.

29 (e) (1) “Financing entity” means, except with respect to
30 financing orders providing for recovery of qualified costs, as
31 defined in this section, the bank, any special purpose trust, as
32 defined in Section 63010 of the Government Code, that is
33 authorized by the bank to issue rate reduction bonds or acquire
34 transition property, or any other entity authorized by the bank to
35 issue rate reduction bonds or acquire transition property, or both.
36 The bank may authorize an entity other than a special purpose
37 trust, as defined in Section 63010 of the Government Code, to
38 issue rate reduction bonds *for transition costs other than qualified*
39 *costs* only if all of the following conditions are met:

40 ~~(1)–~~

(A) The bank by resolution has determined that allowing another entity to issue rate reduction bonds would produce greater overall ratepayer savings, taking into account all relevant considerations including, but not limited to, the exclusion of interest on rate reduction bonds issued by the bank from investors' gross income for California or federal income tax purposes, or both, earnings on funds collected and held by the electrical corporation prior to deposit in a fund or account for the benefit of holders of rate reduction bonds, and all costs of issuance and other transaction costs.

~~(2)~~

(B) The bank submits to the Joint Legislative Budget Committee a certified copy of the bank's resolution, together with a report setting forth the basis for the bank's determination that a financing entity other than the bank or a special purpose trust will produce greater ratepayer savings and at least 30 days have elapsed from the date of submission.

(2) With respect to financing orders providing for recovery of qualified costs, "financing entity" means an electrical corporation or any entity designated by the electrical corporation to issue rate reduction bonds or acquire transition property, or both.

~~(e)~~

(f) "Financing order" ~~shall mean~~ means an order of the commission adopted in accordance with this article, which shall include, without limitation, a procedure to require the expeditious approval by the commission of periodic adjustments to fixed transition amounts included therein to ensure recovery of all transition costs and the costs of capital associated with the proposed provision, recovery, financing, or refinancing thereof, including the costs of issuing, servicing, and retiring the rate reduction bonds contemplated by the financing order. ~~These~~ *With respect to financing orders providing for recovery of transition costs other than qualified costs, these* adjustments shall not impose fixed transition amounts upon classes of customers who were not subject to the fixed transition amounts in the pertinent financing order.

~~(d)~~

(g) (1) "Fixed transition amounts" means, *except with respect to financing orders providing for recovery of qualified costs, those*

1 nonbypassable rates and other charges, including, but not limited
2 to, distribution, connection, disconnection, and termination rates
3 and charges, that are authorized by the commission in a financing
4 order to recover (1) transition costs, and (2) the costs of providing,
5 recovering, financing, or refinancing the transition costs through
6 a plan approved by the commission in the financing order,
7 including the costs of issuing, servicing, and retiring rate reduction
8 bonds. *Notwithstanding the foregoing, fixed transition amounts*
9 *relating to financing orders providing for recovery of qualified*
10 *costs may not constitute fixed transition amounts for purposes of*
11 *Section 367.*

12 (2) *With respect to financing orders providing for recovery of*
13 *qualified costs, fixed transition amounts shall mean those*
14 *nonbypassable rates and other charges, and associated franchise*
15 *fees and uncollectibles, including, but not limited to, distribution,*
16 *connection, disconnection, and termination rates and charges,*
17 *that are authorized by the commission in a financing order to allow*
18 *the electrical corporation to recover all or any portion of both (A)*
19 *qualified costs, and (B) the costs of providing, recovering,*
20 *financing, or refinancing the qualified costs through a plan*
21 *approved by the commission in the financing order, including, but*
22 *not limited to, the costs of issuing, servicing and retiring rate*
23 *reduction bonds. For the purposes of this article, those fixed*
24 *transition amounts shall be imposed on a nonbypassable basis at*
25 *a uniform rate per kilowatthour of electricity consumed.*

26 ~~¶~~

27 (3) *If requested by the electrical corporation in its application*
28 *for a financing order, fixed transition amounts shall include*
29 *nonbypassable rates and other charges to recover federal and state*
30 *taxes whose recovery period is modified by the transactions*
31 *approved in the financing order.*

32 ~~(e)~~

33 (h) *“Rate reduction bonds” means bonds, notes, certificates of*
34 *participation or beneficial interest, or other evidences of*
35 *indebtedness or ownership, issued pursuant to an executed*
36 *indenture or other agreement of a financing entity, the proceeds of*
37 *which are used, directly or indirectly, to provide, recover, finance,*
38 *or refinance transition costs, including, but not limited to, qualified*
39 *costs, and to acquire transition property and that are directly or*
40 *indirectly secured by, or payable from, transition property. Those*

bonds, notes, certificates of participation or beneficial interest, or other evidences of indebtedness or ownership issued to finance recovery of qualified costs shall also be referred to as “rate stabilization bonds.” Chapter 5 (commencing with Section 63070) of Division 1 of Title 6.7 of the Government Code is not applicable to the issuance of rate stabilization bonds.

~~(f)~~—

(i) (1) “Transition costs” means the costs, and categories of costs, of an electrical corporation for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including, but not limited to, voluntary restructuring, renegotiations, or terminations thereof approved by the commission, that were being collected in commission-approved rates on December 20, 1995, and that may become uneconomic as a result of a competitive generation market in that those costs may not be recoverable in market prices in a competitive market, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that these costs are necessary to maintain the facilities through December 31, 2001. ~~Transition~~

(2) Transition costs shall also include the costs of refinancing or retiring of debt or equity capital of the electrical corporation, and associated federal and state tax liabilities.

(3) Transition costs shall also include qualified costs.

(4) For the purposes of this article, “qualified costs” means, with respect to each electrical corporation, (1) the “net undercollected amount” or other amount contemplated to be recovered by a dedicated rate component or components, in either case determined as provided in the applicable electric rate settlement agreement and as verified by the commission in accordance with and to the extent provided in that settlement agreement, (2) interest associated with that net undercollected amount or other amount, if and to the extent provided and determined in accordance with the applicable settlement agreement, (3) the reasonable costs of providing, recovering, financing, or refinancing qualified costs through the applicable financing order, including the costs of issuing, servicing and retiring rate stabilization bonds. Costs shall be considered

1 *qualified costs recoverable by an electrical corporation even if*
2 *they were incurred during periods during which the electrical*
3 *corporation's rates were set at levels prescribed by Sections 367*
4 *and 368. Notwithstanding the foregoing, qualified costs do not*
5 *constitute fixed transition costs for purposes of Section 367.*

6 ~~(g)~~—

7 (j) (1) “Transition property” means the property right created
8 pursuant to this article including, without limitation, the right,
9 title, and interest of an electrical corporation or its transferee:

10 (A) In and to the tariff established pursuant to a financing order,
11 as adjusted from time to time in accordance with subdivision (c)
12 of Section 841 and the financing order.

13 (B) To be paid the amount that is determined in a financing
14 order to be the amount that the electrical corporation or its
15 transferee is lawfully entitled to receive pursuant to the provision
16 of this article and the proceeds thereof, and in and to all revenues,
17 collections, claims, payments, money, or proceeds of or arising
18 from the tariff or constituting fixed transition amounts that are the
19 subject of a financing order including those nonbypassable rates
20 and other charges referred to in subdivision ~~(d)~~ (g).

21 (C) In and to all rights to obtain adjustments to the tariff
22 pursuant to the terms of subdivision (c) of Section 841 and the
23 financing order.

24 (2) “Transition property” shall constitute a current property
25 right notwithstanding the fact that *rate reduction bonds have not*
26 *been issued, or that* the value of the property right will depend on
27 consumers using electricity or, in those instances where consumers
28 are customers of a particular electrical corporation, the electrical
29 corporation performing certain services.

30 (3) For purposes of Sections 63010 and 63025.1 of the
31 Government Code, “transition property” also shall mean
32 certificates representing primarily interests in the property rights
33 described in paragraphs (1) and (2).

34 SEC. 15. Section 841 of the Public Utilities Code is amended
35 to read:

36 841. (a) (1) *This paragraph does not apply to the recovery of*
37 *qualified costs.* An electrical corporation shall, by June 1, 1997,
38 and may from time to time thereafter apply to the commission for
39 a determination that certain transition costs may be recovered
40 through fixed transition amounts, which would therefore

1 constitute transition property under this article. An electrical
2 corporation may request this determination by the commission in
3 separate proceedings or in an order instituting investigation or
4 order instituting rulemaking, or both. The electrical corporation
5 shall in its application specify that the residential and small
6 commercial customers as defined in subdivision (h) of Section 331
7 would benefit from reduced rates through the issuance of rate
8 reduction bonds. The commission shall designate fixed transition
9 amounts as recoverable in one or more financing orders if the
10 commission determines, as part of its findings in connection with
11 the financing order, that the designation of the fixed transition
12 amounts, and issuance of rate reduction bonds in connection with
13 some or all of the fixed transition amounts would reduce rates that
14 residential and small commercial customers would have paid if the
15 financing order were not adopted. These customers shall continue
16 to pay fixed transition amounts after December 31, 2001, until the
17 bonds are paid in full by the financing entity. No electrical
18 corporation shall be found to have acted imprudently or
19 unreasonably for failing to amend a power purchase contract
20 where the amendment would modify or waive an existing
21 requirement that the seller be a qualifying facility pursuant to
22 federal law.

23 *(2) This paragraph applies to recovery of qualified costs. The*
24 *commission shall verify the amount of the net undercollected*
25 *amount or other amount which by the terms of the applicable*
26 *settlement agreement is to be recovered through a dedicated rate*
27 *component and verified by the commission for each electrical*
28 *corporation within 60 days of the date of submission of the amount*
29 *to be verified. To the extent that the verification and any*
30 *adjustments are not complete by that date, the net undercollected*
31 *amount shall be the amount submitted by the electrical*
32 *corporation. The commission shall review the net undercollected*
33 *amount or other amount which by the terms of the applicable*
34 *settlement agreement is to be recovered through a dedicated rate*
35 *component and verified by the commission solely for the purpose*
36 *of verifying recorded amounts and making any adjustments*
37 *resulting from that verification in accordance with the applicable*
38 *settlement agreement. Notwithstanding any other provision of law,*
39 *qualified costs shall be recoverable in accordance with this article*

1 and may not be reviewed by the commission or by any other
2 legislative, administrative, or judicial body for reasonableness.

3 (3) This paragraph applies to financing orders providing for
4 recovery of qualified costs. Notwithstanding any other provision
5 of law, except as provided in Section 840, the commission shall
6 establish, within 60 days following the date of the filing of an
7 application of an electrical corporation, accompanied by a
8 certified copy of a settlement agreement entered into by that
9 electrical corporation, a dedicated rate component or components
10 designed to enable an electrical corporation to recover the
11 qualified costs specified by the settlement agreement over an
12 amortization period to be determined consistent with the related
13 settlement agreement. The dedicated rate components shall be in
14 the form of fixed transition amounts established by the adoption of
15 financing orders as set forth in this section. To the extent provided
16 in the applicable settlement agreement, the commission shall
17 establish an initial dedicated rate component designed to enable
18 the electrical corporation to recover the full qualified costs less the
19 gain expected to be realized from the sale of transmission assets of
20 the electrical corporation as provided in the settlement agreement
21 and shall establish an additional dedicated rate component or
22 components to recover the balance of those qualified costs as and
23 to the extent provided in the settlement agreement. The additional
24 dedicated rate component or components may not appear in rates
25 billed to ratepayers for a period as may be specified in the
26 settlement agreement and shall be subject to those conditions as
27 are provided in the settlement agreement. All dedicated rate
28 components shall be established at the same time, unless otherwise
29 requested by the electrical corporation. Customers shall continue
30 to pay dedicated rate components in accordance with the financing
31 orders until the electrical corporation has recovered the qualified
32 costs set forth in the financing orders and, if rate stabilization
33 bonds have been issued in connection therewith, until those bonds
34 are paid in full by the financing entity.

35 (b) (1) This paragraph does not apply to financing orders
36 providing for recovery of qualified costs. The commission may
37 issue financing orders in accordance with this article to facilitate
38 the provision, recovery, financing, or refinancing of transition
39 costs. A financing order may be adopted only upon the application
40 of an electrical corporation and shall become effective in

accordance with its terms only after the electrical corporation files with the commission the electrical corporation's written consent to all terms and conditions of the financing order. A financing order may specify how amounts collected from a customer shall be allocated between fixed transition amounts and other charges.

(2) *This paragraph applies to financing orders providing for recovery of qualified costs. Except as provided in Sections 846 and 848, the commission shall issue financing orders in accordance with this article to facilitate the provision, recovery, financing, or refinancing of qualified costs. A financing order shall be adopted only upon the application of an electrical corporation and shall become effective in accordance with its terms only after the electrical corporation files with the commission the electrical corporation's written consent to all terms and conditions of the financing order. A financing order shall specify conditions, consistent with the related settlement agreement, to the implementation of the terms of that financing order. Notwithstanding Section 1756, Section 1759, or any other provision of law, no court, except the Supreme Court, has jurisdiction to review, reverse, correct, or annul any financing order; or to suspend or delay the execution or operations thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties in respect thereof, as provided by law and the rules of the court.*

(c) (1) *This paragraph does not apply to financing orders providing for recovery of qualified costs. Notwithstanding Section 455.5, Section 1708, or any other provision of law, except as otherwise provided in this subdivision with respect to transition property that has been made the basis for the issuance of rate reduction bonds, the financing orders and the fixed transition amounts shall be irrevocable and the commission shall not have authority either by rescinding, altering, or amending the financing order or otherwise, to revalue or revise for ratemaking purposes the transition costs, or the costs of providing, recovering, financing, or refinancing the transition costs, determine that the fixed transition amounts or rates are unjust or unreasonable, or in any way reduce or impair the value of transition property either directly or indirectly by taking fixed transition amounts into account when setting other rates for the electrical corporation; nor shall the amount of revenues arising with respect thereto be subject*

1 to reduction, impairment, postponement, or termination. Except
2 as otherwise provided in this subdivision, the State of California
3 does hereby pledge and agree with the owners of transition
4 property and holders of rate reduction bonds that the state shall
5 neither limit nor alter the fixed transition amounts, transition
6 property, financing orders, and all rights thereunder until the
7 obligations, together with the interest thereon, are fully met and
8 discharged, provided nothing contained in this section shall
9 preclude the limitation or alteration if and when adequate
10 provision shall be made by law for the protection of the owners and
11 holders. The bank as agent for the state is authorized to include this
12 pledge and undertaking for the state in these obligations.
13 Notwithstanding any other provision of this section, the
14 commission shall approve the adjustments to the fixed transition
15 amounts as may be necessary to ensure timely recovery of all
16 transition costs that are the subject of the pertinent financing order,
17 and the costs of capital associated with the provision, recovery,
18 financing, or refinancing thereof, including the costs of issuing,
19 servicing, and retiring the rate reduction bonds contemplated by
20 the financing order. The adjustments shall not impose fixed
21 transition amounts upon classes of customers who were not subject
22 to the fixed transition amounts in the pertinent financing order.

23 *(2) This paragraph applies to financing orders providing for*
24 *recovery of qualified costs. Notwithstanding Section 455.5,*
25 *Section 1708, or any other provision of law, except as otherwise*
26 *provided in this subdivision, the financing orders and the fixed*
27 *transition amounts shall, upon the effectiveness of the financing*
28 *orders, be irrevocable and the commission may not have authority*
29 *either by rescinding, altering, or amending the financing order or*
30 *otherwise, to revalue or revise for ratemaking purposes the*
31 *transition costs, or the costs of providing, recovering, financing,*
32 *or refinancing the transition costs, determine that the fixed*
33 *transition amounts or rates are unjust or unreasonable, or in any*
34 *way reduce or impair the value of transition property either*
35 *directly or indirectly by taking fixed transition amounts into*
36 *account when setting other rates for the electrical corporation;*
37 *nor shall the amount of revenues arising with respect thereto be*
38 *subject to reduction, impairment, postponement, or termination.*
39 *Except as otherwise provided in this paragraph, the State of*
40 *California does hereby pledge and agree with the electrical*



1 corporation, the owners of transition property, and holders of rate
2 stabilization bonds that the state shall neither limit nor alter the
3 fixed transition amounts, transition property, financing orders,
4 and all rights thereunder until the electrical corporation has
5 recovered all qualified costs, and if rate stabilization bonds have
6 been issued in connection therewith, obligations under those
7 bonds, together with the interest thereon, are fully met and
8 discharged, provided that nothing contained in this section shall
9 preclude the limitation or alteration of these matters if adequate
10 provision is made by law for the protection of the owners and
11 holders. That pledge shall be deemed to be part of a financing
12 order upon adoption thereof by the commission. Notwithstanding
13 any other provision of this section, the commission shall approve
14 the adjustments to the fixed transition amounts as it determines to
15 be necessary to ensure timely recovery of all qualified costs that
16 are the subject of the pertinent financing order, and the cost of
17 capital associated with the provision, recovery, financing, or
18 refinancing thereof, including the cost of issuing, servicing, and
19 retiring any rate stabilization bonds issued to finance qualified
20 costs contemplated by the financing order.

21 (d) (1) Financing orders issued under this article do not
22 constitute a debt or liability of the state or of any political
23 subdivision thereof, other than the financing entity, and do not
24 constitute a pledge of the full faith and credit of the state or any of
25 its political subdivisions, other than the financing entity, but are
26 payable solely from the funds provided therefor under this article
27 and shall be consistent with Sections 1 and 18 of Article XVI of
28 the California Constitution. This subdivision shall in no way
29 preclude bond guarantees or enhancements pursuant to this article.
30 All the bonds shall contain on the face thereof a statement to the
31 following effect:

32 “Neither the full faith and credit nor the taxing power of the
33 State of California is pledged to the payment of the principal of,
34 or interest on, this bond.”

35 (2) The issuance of bonds under this article shall not directly,
36 indirectly, or contingently obligate the state or any political
37 subdivision thereof to levy or to pledge any form of taxation
38 therefor or to make any appropriation for their payment. Nothing
39 in this section shall prevent, or be construed to prevent, the
40 financing entity from pledging the full faith and credit of the

1 infrastructure bank fund to the payment of bonds or issuance of
2 bonds authorized pursuant to this article.

3 (e) The commission shall establish procedures for the
4 expeditious processing of applications for financing orders,
5 including the approval or disapproval thereof within 120 days, *or*
6 *in the case of applications for financing orders providing for*
7 *recovery of qualified costs, 60 days, of the date of the electrical*
8 *corporation's making application therefor.* The commission shall
9 provide in any financing order for a procedure for the expeditious
10 approval by the commission of periodic adjustments to the fixed
11 transition amounts that are the subject of the pertinent financing
12 order, as required by subdivision (c). The procedure shall require
13 the commission to determine whether the adjustments are required
14 on each anniversary of the issuance of the financing order, and at
15 the additional intervals as may be provided for in the financing
16 order, and for the adjustments, if required, to be approved within
17 90 days of each anniversary of the issuance of the financing order,
18 or of each additional interval provided for in the financing order.

19 (f) Fixed transition amounts shall constitute transition property
20 when, and to the extent that, a financing order authorizing the fixed
21 transition amounts has become effective in accordance with this
22 article, and the transition property shall thereafter continuously
23 exist as property for all purposes with all of the rights and
24 privileges of this article for the period and to the extent provided
25 in the financing order, but in any event until (1) *if the financing*
26 *order provides for recovery of qualified costs, the related electrical*
27 *corporation has recovered the qualified costs and, (2) if rate*
28 *reduction bonds have been issued,* the rate reduction bonds are
29 paid in full, including all principal, interest, premium, costs, and
30 arrearages thereon.

31 (g) Any surplus fixed transition amounts in excess of the
32 amounts necessary to *recover the electrical corporation's*
33 *qualified costs, and if rate reduction bonds have been issued,* pay
34 principal, premium, if any, interest and expenses of the issuance
35 of the rate reduction bonds shall be remitted to the financing entity
36 and may be used to benefit residential and small commercial
37 customers, *or electric customers in the case of surplus fixed*
38 *transition amounts relating to qualified costs,* if this would not
39 result in a recharacterization of the tax, accounting, and other

intended characteristics of the financing, including, but not limited to, the following:

~~(1) Avoiding the recognition of debt on the electrical corporation's balance sheet for financial accounting and regulatory purposes.~~

~~(2) Treating the rate reduction bonds as debt of the electrical corporation or its affiliates for federal income tax purposes and state franchise tax purposes.~~

~~(3) —~~

(2) Treating the transfer of the transition property by the electrical corporation as a true sale for bankruptcy purposes.

~~(4) —~~

(3) Avoiding any adverse impact of the financing on the electrical corporation's credit rating.

(h) The fixed transition amounts relating to qualified costs shall be disconnectible charges.

SEC. 16. Section 842 of the Public Utilities Code is amended to read:

842. (a) ~~Financing~~ *Except as provided in a settlement agreement with respect to rate reduction bonds issued to finance the recovery of qualified costs, financing entities may issue rate reduction bonds upon approval by the commission in the pertinent financing orders. With respect to rate reduction bonds issued to finance recovery of qualified costs, the terms and conditions of those bonds shall be approved by the Director of Finance in accordance with the applicable settlement agreement, which approval shall be conclusive and binding and not subject to review or contest except in accordance with the settlement agreement. In connection with that approval, the Director of Finance may engage those independent consultants as he or she determines to be appropriate. In order to permit the Director of Finance to contract for those purposes, the contract or agreement with any independent consultant may include provision for the indemnification of parties thereto, however, that contract or agreement may not include provisions for the indemnification, including indemnification for any costs of defense, of any party for acts or omissions involving gross negligence, recklessness, or willful misconduct by that party or by the party's employees, agents, or contractors. Rate reduction bonds shall be nonrecourse*

1 to the credit or any assets of the electrical corporation, other than
2 the transition property as specified in the pertinent financing order.

3 (b) Electrical corporations may sell and assign all or portions
4 of their interest in transition property to an affiliate. Electrical
5 corporations or their affiliates may sell or assign their interests to
6 one or more financing entities that make that property the basis for
7 issuance of rate reduction bonds to the extent approved in the
8 pertinent financing orders. Electrical corporations, their affiliates,
9 or financing entities may pledge *or grant a security interest in*
10 transition property as collateral, directly or indirectly, for rate
11 reduction bonds to the extent approved in the pertinent financing
12 orders providing for a security interest in the transition property,
13 in the manner as set forth in Section 843. In addition transition
14 property may be sold or assigned by (1) the financing entity or a
15 trustee for the holders of rate reduction bonds in connection with
16 the exercise of remedies upon a default, or (2) any person
17 acquiring the transition property after a sale or assignment
18 pursuant to this subdivision.

19 (c) To the extent that any interest in transition property is so
20 sold or assigned, or is so pledged as collateral *or a security interest*
21 *granted therein*, the commission shall authorize the electrical
22 corporation to contract with the financing entity that it will
23 continue to operate its system to provide service to its customers,
24 will collect amounts in respect of the fixed transition amounts for
25 the benefit and account of the financing entity, and will account for
26 and remit these amounts to or for the account of the financing
27 entity. Contracting with the financing entity in accordance with
28 that authorization shall not impair or negate the characterization
29 of the sale, assignment, or pledge, *or grant of security interests* as
30 an absolute transfer, a true sale, or security interest, as applicable.
31 *With respect to fixed transition amounts relating to financing*
32 *orders providing for recovery of qualified costs, the obligation of*
33 *the electrical corporation to collect and remit the fixed transition*
34 *amounts consistent with a financing order shall continue*
35 *irrespective of whether that electrical corporation is providing*
36 *electric power or other services to the retail customers obligated*
37 *to pay those fixed transition amounts.*

38 (d) Notwithstanding Section 1708 or any other provision of
39 law, any requirement under this article or a financing order that the
40 commission take action with respect to the subject matter of a

financing order shall be binding upon the commission, as it may be constituted from time to time, and any successor agency exercising functions similar to the commission and the commission shall have no authority to rescind, alter, or amend that requirement in a financing order. The approval by the commission in a financing order of the issuance by an electrical corporation or a financing entity of rate reduction bonds shall include the approvals, if any, as may be required by Article 5 (commencing with Section 816) and Section 701.5. Nothing in Section 701.5 shall be construed to prohibit the issuance of rate reduction bonds upon the terms and conditions as may be approved by the commission in a financing order. Section 851 shall not be applicable to the transfer or pledge of, *or grant of a security interest in*, transition property, the issuance of rate reduction bonds, or related transactions approved in a financing order.

SEC. 17. Section 843 of the Public Utilities Code is amended to read:

843. (a) A security interest in transition property is valid, is enforceable against the pledgor *or grantor* and third parties, subject to the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, and attaches when all of the following have taken place:

(1) The commission has issued the financing order authorizing the fixed transition amounts included in the transition property.

(2) Value has been given by the pledgees of the transition property.

(3) The pledgor *or grantor* has signed a security agreement covering the transition property.

(b) A valid and enforceable security interest in transition property is perfected when it has attached and when a financing statement has been filed in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code naming the pledgor of the transition property as “debtor” and identifying the transition property. Any description of the transition property shall be sufficient if it refers to the financing order creating the transition property. A copy of the financing statement shall be filed with the commission by the electrical corporation that is the pledgor, *grantor*, or transferor of the transition property, and the commission may require the electrical corporation to make other filings with respect to the security

1 interest in accordance with procedures it may establish, provided
2 that the filings shall not affect the perfection of the security
3 interest.

4 (c) A perfected security interest in transition property is a
5 continuously perfected security interest in all revenues and
6 proceeds arising with respect thereto, whether or not the revenues
7 or proceeds have accrued. Conflicting security interests shall rank
8 according to priority in time of perfection. Transition property
9 shall constitute property for all purposes, including for contracts
10 securing rate reduction bonds, whether or not the revenues and
11 proceeds arising with respect thereto have accrued.

12 (d) Subject to the terms of the security agreement covering the
13 transition property and the rights of any third parties holding
14 security interests in the transition property perfected in the manner
15 described in this section, the validity and relative priority of a
16 security interest created under this section is not defeated or
17 adversely affected by the commingling of revenues arising with
18 respect to the transition property with other funds of the electrical
19 corporation that is the pledgor or transferor of the transition
20 property, or by any security interest in a deposit account of that
21 electrical corporation perfected under Division 9 (commencing
22 with Section 9101) of the Commercial Code into which the
23 revenues are deposited. Subject to the terms of the security
24 agreement, upon compliance with the requirements of Section
25 9311 of the Commercial Code, the pledgees *or grantees* of the
26 transition property shall have a perfected security interest in all
27 cash and deposit accounts of the electrical corporation in which
28 revenues arising with respect to the transition property have been
29 commingled with other funds, but the perfected security interest
30 shall be limited to an amount not greater than the amount of the
31 revenues with respect to the transition property received by the
32 electrical corporation within 12 months before (1) any default
33 under the security agreement or (2) the institution of insolvency
34 proceedings by or against the electrical corporation, less payments
35 from the revenues to the pledgees *or grantees* during that
36 12-month period.

37 (e) If an event of default occurs under the security agreement
38 covering the transition property, the pledgees *or grantees* of the
39 transition property, subject to the terms of the security agreement,
40 shall have all rights and remedies of a secured party upon default

1 under Division 9 (commencing with Section 9101) of the
2 Commercial Code, and shall be entitled to foreclose or otherwise
3 enforce their security interest in the transition property, subject to
4 the rights of any third parties holding prior security interests in the
5 transition property perfected in the manner provided in this
6 section. In addition, the commission may require, in the financing
7 order creating the transition property, that, in the event of default
8 by the electrical corporation in payment of revenues arising with
9 respect to the transition property, the commission and any
10 successor thereto, upon the application by the pledgees, *grantees*,
11 or transferees, including transferees under Section 844, of the
12 transition property, and without limiting any other remedies
13 available to the pledgees, *grantees*, or transferees by reason of the
14 default, shall order the sequestration and payment to the pledgees
15 or transferees of revenues arising with respect to the transition
16 property. Any order shall remain in full force and effect
17 notwithstanding any bankruptcy, reorganization, or other
18 insolvency proceedings with respect to the debtor, pledgor,
19 *grantor*, or transferor of the transition property. Any surplus in
20 excess of amounts necessary to pay principal, premium, if any,
21 interest, costs, and arrearages on the rate reduction bonds, and
22 other costs arising under the security agreement, shall be remitted
23 to the debtor or to the pledgor or transferor.

24 (f) Section 5451 of the Government Code shall not apply to any
25 pledge of transition property by a financing entity. Sections 9204
26 and 9205 of the Commercial Code shall apply to a pledge of
27 transition property by an electrical corporation, an affiliate of an
28 electrical corporation, or a financing entity.

29 (g) This section sets forth the terms by which a consensual
30 security interest can be created and perfected in the transition
31 property. Unless otherwise ordered by the commission with
32 respect to any series of rate reduction bonds on or prior to the
33 issuance of the series, there shall exist a statutory lien as provided
34 in this subdivision. Upon the effective date of the financing order,
35 there shall exist a first priority lien on all transition property then
36 existing or thereafter arising pursuant to the terms of the financing
37 order. This lien shall arise by operation of this section
38 automatically without any action on the part of the electrical
39 corporation, any affiliate thereof, the financing entity, or any other
40 person. This lien shall secure all obligations, then existing or

1 subsequently arising, to the holders of the rate reduction bonds
2 issued pursuant to the financing order, the trustee or representative
3 for the holders, and any other entity specified in the financing
4 order. The persons for whose benefit this lien is established shall,
5 upon the occurrence of any defaults specified in the financing
6 order, have all rights and remedies of a secured party upon default
7 under Division 9 (commencing with Section 9101) of the
8 Commercial Code, and shall be entitled to foreclose or otherwise
9 enforce this statutory lien in the transition property. This lien shall
10 attach to the transition property regardless of who shall own, or
11 shall subsequently be determined to own, the transition property
12 including any electrical corporation, any affiliate thereof, the
13 financing entity, or any other person. This lien shall be valid,
14 perfected, and enforceable against the owner of the transition
15 property and all third parties upon the effectiveness of the
16 financing order without any further public notice; provided,
17 however, that any person may, but shall not be required to, file a
18 financing statement in accordance with subdivision (b). Financing
19 statements so filed may be “protective filings” and shall not be
20 evidence of the ownership of the transition property.

21 A perfected statutory lien in transition property is a
22 continuously perfected lien in all revenues and proceeds arising
23 with respect thereto, whether or not the revenues or proceeds have
24 accrued. Conflicting liens shall rank according to priority in time
25 of perfection. Transition property shall constitute property for all
26 purposes, including for contracts securing rate reduction bonds,
27 whether or not the revenues and proceeds arising with respect
28 thereto have accrued.

29 In addition, the commission may require, in the financing order
30 creating the transition property, that, in the event of default by the
31 electrical corporation in payment of revenues arising with respect
32 to transition property, the commission and any successor thereto,
33 upon the application by the beneficiaries of the statutory lien, and
34 without limiting any other remedies available to the beneficiaries
35 by reason of the default, shall order the sequestration and payment
36 to the beneficiaries of revenues arising with respect to the
37 transition property. Any order shall remain in full force and effect
38 notwithstanding any bankruptcy, reorganization, or other
39 insolvency proceedings with respect to the debtor, pledgor, or
40 transferor of the transition property. Any surplus in excess of

amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the rate reduction bonds, and other costs arising in connection with the documents governing the rate reduction bonds, shall be remitted to the debtor or to the pledgor or transferor.

SEC. 18. Section 846 of the Public Utilities Code is amended to read:

846. The authority of the commission to issue financing orders *providing for recovery of transition costs other than qualified costs* pursuant to Section 841 shall expire on December 31, 2015. *The authority of the commission to issue financing orders providing for recovery of qualified costs shall expire on December 15, 2006.* The expiration of the authority shall have no effect upon financing orders adopted by the commission pursuant to this article or any transition property arising therefrom, or upon the charges authorized to be levied thereunder, or the rights, interests, and obligations of the electrical corporation or a financing entity or holders of transition bonds pursuant to the financing order, or the authority of the commission to monitor, supervise, or take further action with respect to the order in accordance with the terms of this article and of the order.

SEC. 19. Section 846.2 of the Public Utilities Code is amended to read:

846.2. (a) Notwithstanding subdivision (c) of Section 841, for any electrical corporation that ended its rate freeze period described in subdivision (a) of Section 368 prior to July 15, 1999, the commission may order a fair and reasonable credit to ratepayers of any excess rate reduction bond proceeds.

(b) “Excess rate reduction bond proceeds,” as used in this section, means proceeds from the sale of rate reduction bonds authorized by commission financing orders issued pursuant to this article that are subsequently determined by the commission to be in excess of the amounts necessary to provide the 10-percent rate reduction during the period when the rates were frozen pursuant to subdivision (a) of Section 368.

(c) *This section does not apply to rate reduction bonds related to recovery of qualified costs.*

SEC. 20. Section 848 is added to the Public Utilities Code, to read:

1 848. The commission may not establish a dedicated rate
2 component pursuant to subdivision (a) of Section 841 for the
3 purpose of providing for the recovery of qualified costs or issue a
4 financing order pursuant to subdivision (b) of Section 841, with
5 regard to an electrical corporation, unless both of the following
6 conditions have been met:

7 (a) The electrical corporation has entered into a settlement
8 agreement and the Director of Finance has advised the commission
9 that the electrical corporation has entered into the definitive
10 agreements which by the terms of that settlement agreement are
11 required to be entered into as of the time of the taking of that action.

12 (b) The electrical corporation has consented to an order of the
13 commission providing for cost-based rates to apply to generation
14 assets owned by the electrical corporation to the extent provided
15 in the applicable settlement agreement and for the period provided
16 in the settlement agreement and obligating the electrical
17 corporation not to apply to the commission for approval to sell
18 those generation assets for the period provided in the settlement
19 agreement.

20 SEC. 21. Section 857 is added to the Public Utilities Code, to
21 read:

22 857. Any sale, assignment, or other disposition of the
23 transmission or other utility assets, including the grant of
24 easements and conveyances in fee of certain lands for conservation
25 purposes, of an electrical corporation to the Department of Water
26 Resources or any other authorized state agency or authority
27 pursuant to a settlement agreement, as defined in Section 840, and
28 any implementing agreements described in that settlement
29 agreement, are not subject to the commission's approval pursuant
30 to Section 851 or otherwise.

31 SEC. 22. Section 1731 of the Public Utilities Code is amended
32 to read:

33 1731. (a) The commission shall set an effective date when
34 issuing an order or decision. The commission may set the effective
35 date of an order or decision prior to the date of issuance of the order
36 or decision.

37 (b) After any order or decision has been made by the
38 commission, any party to the action or proceeding, or any
39 stockholder or bondholder or other party pecuniarily interested in
40 the public utility affected, may apply for a rehearing in respect to

any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property, *or a financing order issued in connection with qualified costs pursuant to Article 5.5 (commencing with Section 840) of Chapter 4.* For purposes of this article, “date of issuance” means the date when the commission mails the order or decision to the parties to the action or proceeding.

SEC. 23. Section 9601 of the Public Utilities Code is amended to read:

9601. (a) Except with respect to supply options of the nature specified in Section 218, with the exception of paragraph (3) of subdivision (b) of that section, as it existed on December 20, 1995, no person, corporation, electrical corporation, or local publicly owned electric utility or other governmental entity other than a retail customer’s existing electric service provider as of December 20, 1995, shall provide partial or full electric service to a retail customer of a local publicly owned electric utility unless the customer first confirms in writing an obligation to pay, through tariff or otherwise, to the utility currently providing electric service, a nonbypassable generation-related severance fee or transition charge established by the regulatory body for that utility. The severance fee or transition charge shall be paid directly to the local publicly owned utility providing electricity service in the service area in which the consumer is located.

(b) Except as provided in subdivision (a) of Section 374, no local publicly owned electric utility or other governmental entity shall provide partial or full electric service to a retail customer of an electrical corporation unless the customer of that electrical corporation first confirms in writing an obligation to pay, through tariff or otherwise, to the electrical corporation currently

1 providing electric service, a nonbypassable generation-related
2 transition charge established by the regulatory body for that
3 electrical corporation, *and any nonbypassable fixed transition*
4 *amount established for that electrical corporation for recovery of*
5 *qualified costs pursuant to Article 5.5 (commencing with Section*
6 *840) of Chapter 4 of Part 1 of Division 1.* The charge shall be paid
7 directly to the electrical corporation providing electricity in the
8 service area in which the consumer is located.

9 (c) No local publicly owned electric utility or electrical
10 corporation shall sell electric power to the retail customers of
11 another local publicly owned electric utility or electrical
12 corporation unless the first utility has agreed to let the second
13 utility make sales of electric power to the retail customers of the
14 first utility.

15 SEC. 24. Section 6016.5 of the Revenue and Taxation Code
16 is amended to read:

17 6016.5. Notwithstanding any other provision of law,
18 “tangible personal property,” for purposes of this part, does not
19 include *either of the following*:

20 (a) Any telephone and telegraph lines, electrical transmission
21 and distribution lines, and the poles, towers, or conduit by which
22 they are supported or in which they are contained.

23 (b) Any other property that may be sold or transferred by an
24 electrical corporation to the Department of Water Resources or
25 any other state agency or authority pursuant to a settlement
26 agreement, as defined in Section 840 of the Public Utilities Code,
27 including, but not limited to, implementing agreements described
28 in that settlement agreement.

29 SEC. 25. Section 6052 is added to the Revenue and Taxation
30 Code, to read:

31 6052. No conveyance of tangible personal property by an
32 electrical corporation to the Department of Water Resources or any
33 other state agency or authority pursuant to a settlement agreement,
34 as defined in Section 840 of the Public Utilities Code, including,
35 but not limited to, implementing agreements described in that
36 settlement agreement, may constitute the sale of tangible personal
37 property for purposes of Section 6051.

38 SEC. 26. Section 80002 of the Water Code is amended to read:

39 80002. Nothing in this division ~~shall~~ *may* be construed to
40 reduce or modify any electrical corporation’s obligation to serve,

1 *except to the extent set forth in a definitive agreement*
2 *implementing the procurement obligations of the department as*
3 *contemplated by a settlement agreement, as defined in Section 840*
4 *of the Public Utilities Code. The department may enter into those*
5 *agreements with electrical corporations and other parties in*
6 *furtherance of the foregoing, as it determines to be appropriate.*
7 ~~The commission shall issue orders it determines are necessary to~~
8 ~~carry out this section.~~ Nothing in this section ~~shall~~ may be
9 construed to obligate the department for any procurement cost
10 obligations of any electrical corporation that may have existed as
11 of the effective date of this section *February 1, 2001.*

12 SEC. 27. Division 28 (commencing with Section 81000) is
13 added to the Water Code, to read:

14
15 DIVISION 28. TRANSMISSION FACILITIES

16
17 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

18
19 81000. The Legislature hereby finds and declares all of the
20 following:

21 (a) Certain high voltage electric transmission facilities
22 currently owned and operated by the electrical corporations within
23 the state can be most effectively and properly managed if those
24 facilities are acquired by the state, and necessary improvements
25 thereto can be best implemented if those facilities are publicly
26 owned.

27 (b) Subject to the negotiation of definitive agreements with the
28 electrical corporation that currently own those facilities, the state
29 should acquire those facilities, as provided in the division.

30 81002. (a) The acquisition and operation by the department
31 of the electric transmission facilities as provided in this division is
32 in all respects for the welfare and the benefit of the people of the
33 state, to protect the public peace, health, and safety, and the
34 improvement of their prosperity and their living conditions
35 constitutes an essential governmental purpose.

36 (b) This division shall be liberally construed to effectuate the
37 purposes and objectives thereof.

38 (c) To the extent this division is inconsistent with any general,
39 special, or local law, this division shall control.

(d) It is the intent of the Legislature that, upon establishment of a state power authority, the powers, duties and functions initially conferred upon the department under this division shall be assumed by that authority.

81004. The powers and responsibilities of the department established under this division are not inconsistent with the existing duties of the department, are not governed by the existing provisions of this code, and are separate and apart from the powers and responsibilities conferred upon the department under other divisions of this code.

81006. As used in this division, unless the context otherwise requires, the following terms have the following meanings:

(a) “Alternate electric assets” means, with respect to an electrical corporation, hydroelectric assets owned by that electrical corporation, or rights to output of those assets or of other generating facilities in which the electrical corporation has an interest.

(b) “Bonds” means bonds, notes, or other evidences of indebtedness, whether or not the interest thereon is excluded from gross income for federal income tax purposes.

(c) “Commission” means the Public Utilities Commission.

(d) “Cost,” as applied to transmission facilities, means and includes, but is not limited to, all of the following:

(1) The cost of acquisition, construction, replacement, reconstruction, improvement, extraordinary maintenance and repair, enlargement, betterment, or extension of any transmission facilities, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto.

(2) The cost of land, land rights, rights-of-way, and easements, fees, permit approvals, licenses, certificates, franchises, and the preparation of applications for, and securing, the transmission facilities specified in paragraph (1).

(3) Administrative, legal, architectural, engineering, and inspection expenses.

(4) Financing fees, expenses, and costs, including, but not limited to, the costs of issuing bonds or incidental to their payment and security; working capital; interest on bonds during the period of acquisition, construction, replacement, reconstruction, improvement, extraordinary maintenance and repair,

1 enlargement, betterment, or extension, and for a reasonable period
2 thereafter, as determined by the department.

3 (5) The establishment of reserves for the payment of principal
4 and interest and for replacement, reconstruction, improvement,
5 enlargement, extraordinary maintenance and repair, betterment, or
6 extension in the amounts that the department may determine from
7 time to time.

8 (6) All other expenditures of the department incidental,
9 necessary, or convenient to determining the feasibility of any
10 transmission facilities and the acquisition, construction,
11 replacement, reconstruction, improvement, enlargement,
12 extraordinary maintenance and repair, betterment, or extension
13 thereof, and placing the same in operation.

14 (e) “Distributing utilities” means an electrical corporation
15 distributing electricity to retail end-use customers.

16 (f) “Electrical corporation” has the same meaning as that term
17 is defined in Section 218 of the Public Utilities Code.

18 (g) “Fund” means the Department of Water Resources Electric
19 Transmission Fund established by Section 81300.

20 (h) “Retail end-use customer” means any customer within the
21 service area of an electrical corporation receiving or capable of
22 receiving electricity from any person or entity through the
23 facilities of the electrical corporation.

24 (i) “Revenues” means and includes any and all revenues,
25 receipts, charges, income, profits, proceeds, or other money or
26 monetary benefits, derived by the department, directly or
27 indirectly, from whatever source, as a result of the ownership,
28 operation, use, or disposition of transmission facilities, including,
29 but not limited to, income or revenue derived from the investment
30 of moneys in the fund.

31 (j) “Service area” means the geographical area within which
32 an electrical corporation distributes electricity.

33 (k) “Transmission facilities” means all facilities and property,
34 real and personal, incidental, necessary, or convenient for the
35 transmission of electricity, acquired or constructed by the
36 department pursuant to this division, including, but not limited to,
37 rights of way, easements, towers, poles, lines, transformers,
38 equipment, and associated inventory and, to the extent and in the
39 circumstances contemplated by a settlement agreement, may
40 include alternate electric assets of electrical corporations.

1 81012. (a) The department may adopt regulations for
2 purposes of this division as emergency regulations in accordance
3 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
4 Division 3 of Title 2 of the Government Code. For purposes of that
5 Chapter 3.5, including, but not limited to, Section 11349.6 of the
6 Government Code, the adoption of the regulations shall be
7 considered by the Office of Administrative Law to be necessary
8 for the immediate preservation of the public peace, health and
9 safety, and general welfare. Notwithstanding the 120-day
10 limitation provided by subdivision (e) of Section 11346.1 of the
11 Government Code, the regulations shall be repealed 180 days after
12 their effective date, unless the department complies with that
13 Chapter 3.5, as provided in subdivision (e) of Section 11346.1 of
14 the Government Code. Those regulations may include, without
15 limitation, regulations relating to the safety, operation and
16 conditions of service of transmission facilities addressing matters
17 comparable to those matters addressed by tariffs, conditions of
18 service and regulations applicable to transmission facilities while
19 owned by electrical corporations.

20 (b) (1) The provisions of the Government Code and the Public
21 Contract Code applicable to state contracts, including, but not
22 limited to, advertising and competitive bidding requirements and
23 prompt payment requirements do not apply to a contract entered
24 into pursuant to this division, to the extent that the department
25 determines that application of such a provision is detrimental to
26 accomplishing the purposes of this division.

27 (2) Notwithstanding any other provision of law, the department
28 may procure and enter into contracts in furtherance of the purposes
29 of this division on a lowest responsible bidder basis or on the basis
30 of negotiated competitive proposals, with or without
31 prequalification. The documents under which competitive
32 proposals are requested and negotiated shall set forth the terms and
33 conditions of the competitive process and the selection criteria for
34 determining the most advantageous proposer, including price and
35 nonprice factors.

36 (c) The department shall be designated as a “public utility” for
37 purposes of this division, but is not subject to the jurisdiction or
38 regulation of the commission.

39 81014. All state agencies and other official state
40 organizations, and all persons connected therewith, shall and are



1 hereby authorized to give the department, at the request of the
2 department, reasonable assistance or other cooperation in carrying
3 out the purposes of this division.

4 81016. Nothing contained in this division may be construed
5 as a waiver of the sovereign immunity of the state. However, the
6 department may waive that immunity by regulation or contract
7 with respect to any of its bonds, contracts or other obligations or
8 activities pursuant to this division.

9 81018. (a) This division constitutes full, sufficient, and sole
10 authority for the department to exercise the powers granted in this
11 division, and may not be regarded as in derogation of any powers
12 now existing.

13 (b) In addition to the authority specified in subdivision (a),
14 notwithstanding any other provision of law, the exercise of any
15 power pursuant to this division, including, without limitation, the
16 conveyance or transfer of any easement rights, permits or other
17 property interest by an electrical corporation to the department and
18 the implementation of any settlement agreement, as defined in
19 Section 840 of the Public Utilities Code, and all related actions
20 taken by any person pursuant to this division, is not subject to any
21 authorizations, approvals, or filings by or with the state or any
22 department, agency, commission, instrumentality, or political
23 subdivision of the state, except as may be specifically required and
24 provided by this subdivision.

25 (c) In accordance with paragraph (4) of subdivision (b) of
26 Section 21080 of the Public Resources Code, the implementation
27 of any settlement agreement, as defined in Section 840 of the
28 Public Utilities Code, and all related actions taken pursuant to this
29 division are necessary to mitigate the current electrical emergency.
30 Accordingly, the taking of any action and the exercise of any
31 power pursuant to this division in connection with the acquisition
32 of transmission facilities from any electrical corporation or the
33 implementation of any settlement agreement, as defined in Section
34 840 of the Public Utilities Code, are exempt from the requirements
35 of Division 13 (commencing with Section 21000) of the Public
36 Resources Code.

37



CHAPTER 2. TRANSMISSION FACILITIES

81100. Upon those terms, limitations, and conditions as it prescribes, the department may do any of the following:

(a) Acquire or construct any transmission facilities, including, but not limited to, the acquisition of any existing transmission facilities owned by an electrical corporation. However, any acquisition from any electrical corporation of transmission facilities in existence on the effective date of this division, is subject to Section 81132.

(b) Operate, maintain, repair, replace, reconstruct, improve, enlarge, better, or extend any transmission facilities, or contract with any person or entity, public or private, for the operation, maintenance, repair, replacement, reconstruction, or improvement, enlargement, betterment, or extension of any transmission facilities.

(c) Sell, exchange, transfer, or otherwise dispose of all or any portion of any transmission facilities.

(d) Sell, exchange, transfer, or otherwise dispose of all or any portion of the capacity or output of any transmission facilities or otherwise contract with respect to the use thereof to, or with, any person or entity, public or private, within or without the state.

(e) Acquire, own, use, lease, or operate lands, structures, real and personal property, rights, rights-of-way, franchises, licenses, easements, and interests incidental, necessary or convenient to the purposes of this division, whether within or without the state, and, to the extent the department determines that this property or those rights are no longer necessary or desirable for the purposes of this division, sell by installment sale or otherwise, and dispose of the same.

(f) Enter into any option to take any action permitted by this division.

(g) Acquire or contract for any facilities or services incidental, necessary, or convenient to any transmission facilities, and otherwise enter into any contract with any person or entity in furtherance of the purposes of this division.

(h) Obtain insurance, guarantees, letters of credit, surety bonds, or other performance assurances with respect to any of the department's obligations under this division, and to contract with providers thereof with respect thereto.

(i) Negotiate and contract with any person or entity, public or private, to carry out any of the powers granted under this division on the terms and conditions that the department determines to be appropriate or desirable if the department determines that it is necessary, desirable, or useful.

(j) Enter into contracts for any combination of work or services authorized under this division, including, but not limited to, contracts structured on a design-build, design-build-operate, design-build-finance-operate, build-own-operate-transfer, construction-manager-at-risk, or any other combined work or service basis.

(k) Exercise its power to contract for work or services under this division whether or not the facilities with respect to which those contracts are entered into are owned by the department or privately owned, or are financed by the department or privately financed.

(l) Subject to Chapter 3 (commencing with Section 81200), borrow money and issue bonds, and renew or refund any bonds, and provide with respect thereto.

(m) (1) Pledge or assign any of the following, as security for the department's obligations under any bonds, contracts, or other obligations authorized pursuant to this division:

(A) Revenues and rights to receive the same.

(B) Moneys on deposit in the fund.

(C) All or any portion of the department's interests in assets, things of value, mortgages, deeds of trust, indentures of mortgage or trust, or similar instruments, notes, and security interests in property, tangible or intangible.

(2) Any pledge of revenues made by the department is valid and binding from the time the pledge is made, so that the revenues so pledged and thereafter collected, or paid directly or indirectly to or for the account of the department, is hereby made, and shall immediately be, subject to the lien of the pledge without any physical delivery thereof or further action. The lien of the pledge shall additionally be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the department irrespective of whether the parties have notice thereof. No resolution or instrument by which the pledge or lien created pursuant to this subdivision is expressed, confirmed, or approved

1 is required to be filed or recorded in order to perfect the pledge or
2 lien.

3 (3) This division shall in all respects govern the creation,
4 perfection, priority, and enforcement of any lien created by or
5 under this division.

6 (n) Mortgage all or any portion of the department's interest in
7 any real or personal property, whether now owned or hereafter
8 acquired, including the granting of a security interest in any
9 property, tangible or intangible.

10 (o) Pay or provide for the payment of all costs of transmission
11 facilities not funded from the proceeds of bonds.

12 (p) Acquire property through the exercise of the power of
13 eminent domain, as provided in Section 81130.

14 (q) Enter into joint powers agreements with eligible public
15 agencies pursuant to Chapter 5 (commencing with Section 6500)
16 of Division 7 of Title 1 of the Government Code.

17 (r) Do all acts and things necessary, convenient, or expedient
18 to carry out the purposes, objects, and intent of this division and
19 to exercise the powers granted to the department under this
20 division, and generally to exercise in connection with its activities
21 and affairs any and all powers that may be exercised by a natural
22 person or private corporation in connection with similar activities
23 and affairs.

24 81112. A contract or agreement pursuant to this chapter may
25 include provision for the indemnification of parties with whom the
26 department contracts as the department determines to be necessary
27 to accomplish the purposes of this division. However, a contract
28 or agreement pursuant to this section may not include provisions
29 for the indemnification, including indemnification for any costs of
30 defense, of any party to the contract or agreement for acts or
31 omissions involving gross negligence, recklessness, or willful
32 misconduct by that party or by the party's employees, agents, or
33 contractors.

34 81114. Any contract or agreement pursuant to this chapter
35 shall contain any contractual terms and security provisions that the
36 department determines are necessary or appropriate, and the
37 department may enter into those arrangements it determines to be
38 necessary or appropriate to implement this section.

39 81116. Notwithstanding any other provision of law, the
40 department may make payment, or provide for the payment, under

any contract or other obligation entered into pursuant to this division in advance of the receipt of consideration therefor, if the department determines that prepayment is financially advantageous and that adequate provision has been made for the security of the department.

81118. To the extent that the department contracts with an electrical corporation or other private party for the operation of a transmission facility acquired by the department from an electrical corporation that constitutes real property subject to local property taxation prior to its acquisition, the department shall provide, as a term of the operating contract, for the payment by the operator of the transmission facility of payments in lieu of taxes to the local agency, as defined by subdivision (a) of Section 95 of the Revenue and Taxation Code, in which the transmission facility is located in amounts not greater than the property tax revenues that would have been received by the local agency if the property had continued to be owned by the electrical corporation. No contract for the operation of any transmission facilities of the department shall be deemed to create a possessory interest under the Revenue and Taxation Code.

81120. (a) (1) Except as provided in subdivision (b), the department shall fix, establish, revise, charge, receive, and collect, either directly or through an agent, tariffs, rates, and charges for capacity and output and other use of transmission facilities that is sold, furnished, or supplied pursuant to this division to any person or entity, public or private. Section 7901.1 of the Public Utilities Code does not limit the right of the department to establish and collect rates and charges for the use of transmission facilities.

(2) (A) The department shall, and in any bond, contract, or other obligation may covenant and agree to, fix, establish, revise, charge, and collect tariffs, rates, and charges for the use of transmission facilities or the capacity and output thereof sold or otherwise furnished by it which shall be sufficient, together with other funds available or expected by the department to be available to it for the purpose, to provide all of the following:

(i) Amounts necessary to pay the principal of and premium, if any, and interest on all bonds as and when the same shall become due.

1 (ii) Amounts necessary to pay all costs of transmission
2 facilities and otherwise meet its obligations under any contracts or
3 other obligations authorized by this division or by other law.

4 (iii) Amounts necessary to fund or maintain operating and debt
5 service reserves in the amounts that the department may determine
6 from time to time to be necessary or desirable.

7 (iv) Amounts necessary to pay the administrative costs of the
8 department incurred in administering this division.

9 (B) Charges for transmission services provided by the
10 department under this division to transmit power to wholesale or
11 retail end-use customers shall be a direct obligation of those
12 customers to the department.

13 (b) To the extent that the revenue requirements of the
14 department are to be recovered from retail end-use customers and
15 not from rates and charges payable from electrical corporations or
16 other parties who may contract for, or otherwise use or benefit
17 from, the use of the department's transmission facilities or the
18 capacity and output thereof, the department shall, upon fixing,
19 establishing or revising tariffs, rates and charges, as provided in
20 subdivision (a), for the use of transmission facilities or the capacity
21 and output thereof by or for the benefit of retail end-use customers
22 within the service area of each distributing utility, notify the
23 commission of that fact and provide details thereof with sufficient
24 particularity to permit the commission to fulfill its obligations
25 pursuant to subdivision (a) of Section 81122.

26 (c) The department may employ any remedy available to it at
27 law or in equity to enforce the payment of those tariffs, rates, and
28 charges.

29 81122. (a) (1) To the extent that the department advises the
30 commission that a portion of the department's revenue
31 requirements are to be collected directly from retail end-use
32 customers, the commission shall fix, establish, and revise tariffs,
33 rates, and charges that shall be payable by the related retail end-use
34 customers to recover in full the tariffs, rates, and charges for the
35 use of transmission facilities, or the capacity and output thereof,
36 by or for the benefit of, those retail end-use customers as
37 established by the department pursuant to Section 81120. These
38 tariffs, rates, and charges shall be separate and apart from rates
39 charged to retail end-use customers for services other than
40 electricity transmission services supplied by the department, and

without any limitation on tariffs, rates, or charges otherwise imposed by law. Notwithstanding any other provision of law, those tariffs, rates, and charges shall constitute disconnectible charges the nonpayment of which by a customer, in whole or in part, entitles the electrical corporation to disconnect electric service under procedures set forth in commission tariffs to the same extent as they were payable to an electrical corporation.

(2) The tariffs, rates, and charges specified in paragraph (1), and the proceeds thereof, shall at all times constitute and be the property of, and shall be payable to, the department, paid to the department daily upon collection, segregated at all times from other funds of the electrical corporations pending payment, and collected by the electrical corporations as agent for the department, and shall not be or become the property of the electrical corporations.

(3) The commission shall require distributing utilities to make payment in full of the proceeds of all those tariffs, rates, and charges specified in paragraph (1) and to enforce the payment obligations of retail end-use customers served by it to the fullest extent practicable.

(b) The commission shall, if requested by the department, enter into an agreement or agreements with the department with respect to the subject matter of subdivision (a), which agreement shall be irrevocable except to the extent otherwise agreed by both the department and the commission.

81124. (a) This division does not preclude the assignment, by the enactment of legislation, of the powers and functions of the department set forth in this division to any other public entity, department, agency, or instrumentality of the state.

(b) Any obligation entered into pursuant to this division may provide for the assignment thereof to, and the assumption thereof by, any public entity, department, agency, or instrumentality or any other person, as the department determines to be appropriate.

81126. (a) The department may do any of the following, as the department determines to be necessary for the purposes of this division:

(1) Hire and appoint employees as required, at salary levels determined by the department to be competitive to attract and retain persons with the necessary expertise and skills. Prior to hiring or appointing an employee at a salary in excess of a salary

1 approved by the Department of Personnel Administration, the
2 department shall submit the proposed salary to the Director of
3 Finance who shall submit it to the Legislature in accordance with
4 Section 27.00 of the annual Budget Act. The excess portion of a
5 salary, as determined by the Department of Personnel
6 Administration, that is authorized under this section may not be
7 considered salary in the calculation of final compensation for
8 purposes of the benefits under the Public Employees' Retirement
9 System.

10 (2) Engage the services of private parties to render professional
11 and technical assistance and advice in carrying out the purposes of
12 this division.

13 (3) Contract for the services of other public agencies.

14 (b) The State Personnel Board and the Department of
15 Personnel Administration shall assist the department in expediting
16 the hiring of personnel necessary or desirable for the timely and
17 successful implementation and administration of the department's
18 duties and responsibilities pursuant to this division.

19 81128. While any bonds, contracts, or other obligations of the
20 department incurred pursuant to this division remain outstanding
21 and not fully performed or discharged, the rights, powers, duties,
22 and existence of the department and the commission may not be
23 diminished or impaired in any manner that will affect adversely the
24 interests and rights of the holders of the bonds or parties to the
25 contracts or other obligations, nor shall the terms of the bonds,
26 contracts, or other obligations, or the rights or remedies of the
27 holders of the bonds or other parties to those contracts or other
28 obligations, be impaired. The department may include this pledge
29 and undertaking of the state in the department's obligations.

30 81130. (a) If the department cannot acquire any necessary
31 property by agreement with the owner, the department may
32 exercise the power of eminent domain to acquire the property in
33 the name of the state if the purpose for which the property is
34 acquired is a purpose authorized by this division and funds are
35 available, or are expected by the department to be available,
36 therefor in the fund.

37 (b) No property dedicated to public use prior to the effective
38 date of this division may be acquired by the department through
39 eminent domain proceedings, unless it is first determined in a court
40 of competent jurisdiction that the use proposed to be made thereof

1 by the department is a more necessary public use than the use to
2 which it has already been appropriated or dedicated.

3 (c) Except as provided in subdivision (d), if any property
4 subject to subdivision (b) has been filed on, appropriated, or
5 dedicated to public use by any state agency, the use thereof by that
6 state agency shall be deemed a more necessary public use unless
7 that state agency consents to the acquisition of the property by the
8 department.

9 (d) If any property subject to subdivision (b) has been filed on,
10 appropriated, or dedicated to a public use by any state agency and
11 the use proposed to be made thereof by the department is consistent
12 with the continuance of the use thereof by that state agency for its
13 purposes, the right to use that property for the purposes proposed
14 by the department shall be deemed to be common and consistent
15 with the use being made thereof by that state agency and the
16 department may acquire that property by eminent domain.

17 (e) The department may not take or destroy the whole or any
18 part of the line or plant of any common carrier railroad, other
19 public utility other than an electrical corporation, or state agency,
20 or the appurtenances thereof, except under either of the following
21 conditions:

22 (1) The department provides and substitutes for the facilities to
23 be taken or destroyed with new facilities of like character and at
24 least equal in usefulness with suitable adjustment for any increase
25 or decrease in the cost of operating and maintenance thereof.

26 (2) The taking or destruction has been permitted by an
27 agreement executed between the department and the common
28 carrier, public utility other than an electrical corporation, or state
29 agency.

30 (f) If the department and any common carrier railroad, other
31 public utility other than an electrical corporation, or state agency
32 fail to agree as to the character or location of new facilities that are
33 required to be provided pursuant to paragraph (1) of subdivision
34 (e), the character and location of the new facilities and any other
35 controversy concerning requirements imposed by this section
36 shall be submitted to, and determined and decided by, the
37 commission.

38 (g) The expense of the department in complying with the
39 requirements of this section is part of the cost of acquiring or
40 constructing the related purpose.

1 81132. The department may not acquire transmission
2 facilities in existence on the effective date of this division from any
3 electrical corporation, unless the Director of Finance determines,
4 and certifies in writing, that the following conditions have
5 occurred:

6 (a) The department has determined on or before the date it
7 executes a definitive agreement to acquire those transmission
8 facilities from the electrical corporation that the acquisition price
9 payable by the department for those transmission facilities is fair
10 and reasonable.

11 (b) All conditions to that acquisition under the definitive
12 agreements entered into pursuant to a settlement agreement, as
13 defined in Section 840 of the Public Utilities Code, with that
14 electrical corporation have been satisfied or waived.

15 (c) Any required approval of the transfer of the transmission
16 facilities by the Federal Energy Regulatory Commission has been
17 obtained on terms and conditions that are consistent with the
18 related settlement agreement, as defined in Section 840 of the
19 Public Utilities Code.

20 81133. A written certification by the Director of Finance
21 issued pursuant to Section 81132 shall be conclusive and binding,
22 except as may otherwise be provided in the agreement providing
23 for the purchase of those transmission facilities, and may not be
24 subject to any further proceeding or review.

25 CHAPTER 3. BONDS

26
27
28 81200. (a) The department may incur indebtedness and issue
29 bonds for the purposes of paying the costs of transmission facilities
30 and reimbursing expenditures from the fund for those purposes,
31 renewing or refunding other bonds, and for any other purpose of
32 the department authorized by this division.

33 (b) Bonds may be issued by the department upon authorization
34 by the written determination of the director, with the approval of
35 the Director of Finance and the Treasurer. The Director of Finance
36 and the Treasurer shall notify the Chairperson of the Joint
37 Legislative Budget Committee and the chairperson of the
38 committee in each house of the Legislature that considers
39 appropriations of their written determination.

81202. Bonds shall be sold at the prices and in the manner, either at public or private sale, and on the terms and conditions that shall be specified in, or pursuant to, the determination specified in subdivision (b) of Section 81200, and that determination may contain or authorize those provisions as may be deemed reasonable and proper for the security of bondholders and any other provision, condition, or limitation not inconsistent with this division. Bonds may mature at that time or times, and bear interest at the rate or rates, that may be fixed or variable and be determined by reference to an index or by auction or any other method, as shall be specified in or pursuant to that determination. Neither the person executing the determination to issue bonds, nor any person executing bonds, is personally liable therefor or subject to any personal liability or accountability by reason of the execution or issuance thereof.

81204. In the discretion of the department, any bonds may be secured by a trust agreement by and between the department and a corporate trustee, which may be any trust company or bank having trust powers within or without the state, or the Treasurer. Notwithstanding any other provision of law, the Treasurer is deemed not to have a conflict-of-interest by reason of acting as trustee. The department may enter into those contracts or arrangements that it deems to be necessary or appropriate for the issuance and further security of the bonds.

81206. Bonds shall be legal investments for all trust funds, the funds of all insurance companies, banks, both commercial and savings, trust companies, executors, administrators, trustees, and other fiduciaries, for state school funds, pension funds, and for any funds that may be invested in county, school, or municipal bonds.

81208. Notwithstanding that bonds may be payable from a special fund, they shall be deemed to be negotiable instruments for all purposes, subject only to the provisions thereof for registration.

81210. Any and all bonds, their transfer and the income therefrom shall at all times be free from taxation of every kind by the state and by all political subdivisions of the state.

81212. Bonds may not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the department, or a pledge of the faith and credit of the state or of any political subdivision, but shall be payable solely from the funds provided for in this division. All bonds shall contain a

1 statement to the following effect: “Neither the faith and credit nor
2 the taxing power of the State of California is pledged to the
3 payment of the principal of or interest on this bond.” The issuance
4 of bonds shall not directly, indirectly, or contingently obligate the
5 state or any political subdivision thereof to levy or to pledge any
6 form of taxation whatever therefor or to make any appropriation
7 for their payment.

8
9 CHAPTER 4. DEPARTMENT OF WATER RESOURCES ELECTRIC
10 TRANSMISSION FUND
11

12 81300. (a) There is hereby established in the State Treasury
13 the Department of Water Resources Electric Transmission Fund.
14 Moneys in the fund shall be separate and distinct from any other
15 fund and money administered by the department or the Treasurer.
16 Notwithstanding Section 13340 of the Government Code, all
17 moneys in the fund are continuously appropriated, without regard
18 to fiscal year, to the department for expenditure for the purposes
19 of this division.

20 (b) All revenues payable to the department under this division
21 shall be deposited in the fund. Notwithstanding any other
22 provision of law, interest accruing on money in the fund shall
23 remain in the fund and shall be used for the purposes of this
24 division. Payments from the fund may be made only for the
25 purposes authorized by this division, including, but not limited to,
26 the administrative costs of the department incurred in
27 administering this division.

28 81302. Bonds, contracts, and other obligations authorized by
29 this division shall be payable solely from the fund, subject to any
30 agreement with bondholders or parties to other contracts or
31 obligations. Neither the full faith and credit nor the taxing power
32 of the state are or may be pledged for any payment under any bond,
33 contract, or other obligation authorized by this division.

34
35 CHAPTER 5. REPORTING
36

37 81400. The department shall prepare and submit to the
38 Governor and the Legislature annual reports regarding its
39 activities and expenditures pursuant to this division.

1 SEC. 28. If any part of this act, or the application thereof to
2 any person or circumstance, is held invalid, the remainder of this
3 act, including the application of that part or provision to other
4 persons or circumstances, shall not be affected thereby, and this act
5 shall otherwise continue in full force and effect and shall otherwise
6 be fully operative. To this end, the provisions of this act, and each
7 of them, are hereby declared to be severable.

8 SEC. 29. No reimbursement is required by this act pursuant
9 to Section 6 of Article XIII B of the California Constitution
10 because the only costs that may be incurred by a local agency or
11 school district will be incurred because this act creates a new crime
12 or infraction, eliminates a crime or infraction, or changes the
13 penalty for a crime or infraction, within the meaning of Section
14 17556 of the Government Code, or changes the definition of a
15 crime within the meaning of Section 6 of Article XIII B of the
16 California Constitution.

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